

# IMPLICATIONS OF THE U.S.-NORTH KOREA NUCLEAR AGREEMENT

Y 4. F 76/2: S. HRC. 103-891

Implications of the U.S.-North Kore...

## HEARING

BEFORE THE

SUBCOMMITTEE ON  
EAST ASIAN AND PACIFIC AFFAIRS

OF THE

COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

DECEMBER 1, 1994

Printed for the use of the Committee on Foreign Relations



U.S. GOVERNMENT PRINTING OFFICE

84-836 CC

WASHINGTON : 1995



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# IMPLICATIONS OF THE U.S.-NORTH KOREA NUCLEAR AGREEMENT

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THURSDAY, DECEMBER 1, 1994

U.S. SENATE,  
SUBCOMMITTEE ON EAST ASIAN AND  
PACIFIC AFFAIRS OF THE  
COMMITTEE ON FOREIGN RELATIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:06 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Charles S. Robb (chairman of the subcommittee) presiding.

Present: Senators Pell, Robb, Pressler, Murkowski, and Gregg.

Senator ROBB. The subcommittee will come to order.

This morning we welcome back Ambassador Gallucci before this subcommittee. We have had an ongoing exchange with the Ambassador through numerous public and classified hearings, beginning in May of 1993. I don't even remember the exact number right now. The Agreed Framework with North Korea, signed on October 21, 1994, is our focus today.

Ambassador Gallucci was not going to be available on the original date that this hearing was set, and I certainly thought that his participation was important enough to make a shift to accommodate his schedule, and we very much thank the Ambassador for agreeing to testify this morning.

A distinguished private panel will follow the Ambassador to offer their views on the subject at hand. This accord, to lift and replace North Korea's nuclear weapons facilities, involves a complex set of give and take steps over a lengthy period. These nonproliferation and security specialists, Mr. Gary Milhollin from the Wisconsin Project on Nuclear Arms Control, Mr. Robert Manning from the Progressive Policy Institute, Mr. Henry Sokolski from the Nonproliferation Policy Education Center, and Mr. Mitchell Reiss from the Woodrow Wilson Center, will help us sort through its inherent strengths and weaknesses. We certainly thank them for coming as well. They will be asked to come forward as soon as Ambassador Gallucci finishes his testimony.

Now let me try to set the stage for this hearing.

The Agreed Framework of October 21 effectively extends our negotiations with North Korea over its nuclear weapons program into the next century. In the early stages, North Korea has agreed to freeze its entire nuclear program, including construction of its 50 and 200 megawatt reactors and its reprocessing plant, and at a later time to dispose of the spent fuel presently sitting in storage ponds in a "safe manner."

When a significant portion of the light water reactor project is completed, North Korea will then disclose its past nuclear activities. Finally, it will dismantle its gas graphite nuclear reactor system. None of the actions to be taken by the North Koreans are likely to meet much resistance in the United States, South Korea, or Japan, except the timing and the method of enforcement.

These North Korean concessions, however, come at a very stiff price. The United States, South Korea, Japan, and others have agreed to provide North Korea with two light water reactor units with a combined generating capacity of approximately 2,000 megawatts by the year 2003. Their estimated value is something in the range of \$4 billion.

In addition, the U.S. has agreed to provide 150,000 tons of heavy oil in the first year and 500,000 of heavy oil annually thereafter, theoretically, at least, to offset the anticipated lost power production from the existing 5 megawatt reactor and the 50 and 200 megawatt facilities when they came on line.

Much of the agreement depends on North Korea's good faith and requires the United States, South Korea, and Japan to perform first. Heavy fuel oil is provided within 90 days. Some barriers to trade and investment will be eased shortly, and talks get underway in the very near-term on providing the light water technology and opening diplomatic liaison offices in Pyongyang and Washington.

Only near the end of the century do we begin to learn definitively about North Korea's past nuclear activities through special inspections and how much plutonium it has reprocessed, allowing for the construction of a nuclear device or devices.

In short, we are going to be well down the road of providing economic incentives and financing light water technology, such as specification and fabrication of major reactor components, delivery of turbines and generators, construction of the reactor building, and much more before we have the ability to confirm anything about North Korea's true nuclear weapons capability. Moreover, in a few years, nothing prevents Kim Jong II from taking these carrots and breaking from the agreement. That, of course, would foil, once again, efforts of the international community to bring the Yongbyon facility into full compliance with the safeguards agreement.

Admittedly, this is a worst case scenario. But I would have to confess that I have serious reservations about giving North Korea the benefit of the doubt, given its track record of noncompliance and deceit.

In past hearings, I have expressed concern that in these negotiations North Korea was getting a very advantageous deal for merely returning to the "status quo ante"—adherence to the Nuclear Non-proliferation Treaty to which it was already bound. I still firmly believe that. Some have even characterized this as nuclear blackmail.

Perhaps even more important in the near term is the ripple effect in other areas of our foreign policy due to the agreed framework. Other unfriendly states, like Iran, may be at the door next to cash in its burgeoning program for a "to be negotiated sum."

If I understand its implications correctly, the Agreed Framework suggests a fundamental shift away from a long-standing U.S. policy of insuring nuclear deterrence by sanction and penalty. Rather



than using pressure tactics against countries attempting to build an indigenous nuclear weapons program, it seems to me that the administration leaves itself vulnerable to being forced to buy them off one by one.

Admittedly, throwing bombs at the Agreed Framework without offering and attempting to justify rational alternatives does not serve the country's interests and is extremely unfair to the administration, which worked very hard to get this deal. I, for one, do not want to have to refight the Korean War on the peninsula to reign in North Korea's nuclear weapons program. At the very least, if this agreement passes muster with Congress, I believe steps should still be taken by the State Department to tighten it in specific areas.

For \$4 billion it seems to me we should get more than just nebulous commitments over a 10 year lifetime. Specifically, the times and dates of sequenced events, particularly North Korean actions, demand more clarity. As far as I am concerned, that clarity is not sufficient right now in the Agreed Framework or the accompanying Confidential Minute. At a bare minimum, I would urge setting near-term public deadlines unilaterally, No. 1, for conducting special inspections for suspected nuclear waste sites, No. 2, for resolving final disposition of the spent nuclear fuel outside of the country, and No. 3, for achieving measurable progress in the North-South dialog and the talks involving North Korea's compliance with the North-South Joint Declaration on the denuclearization of the Korean peninsula.

Again, there are no hard dates in the text of the agreement that specify when any of these things must occur. Should North Korea fail to abide by these deadlines, I believe the administration should make clear its intent to shelve all future negotiations and pursue multilateral economic and political sanctions.

Finally, I would urge the President to issue a statement in coordination with South Korean President Kim Young Sam that U.S. troop levels will be maintained in South Korea for the duration of the agreement and that team spirit military exercises will continue annually.

There are numerous other issues I would like to review with Ambassador Gallucci this morning, including what Secretary Christopher meant in reference to the agreement's defined checkpoints in a speech he gave in Seoul last month, how the Korean Energy Development Organization will be managed, what the breakdown will be on the financing of the deal, and a better understanding of who will pay for what and what Congress' role will be in all of this.

We look forward to hearing from Ambassador Gallucci on all of these points. But before we do, I would like to turn to the ranking member, soon to be chairman of the East Asia Pacific Committee, Senator Murkowski.

Senator MURKOWSKI. Thank you very much, Senator Robb.

I wonder if I could defer to Senator Pell, the chairman of the committee.

Senator ROBB. I would be very pleased. I was going to ask the chairman of the full committee if he would like to be heard next and you are very gracious to do so.

The CHAIRMAN. You are very kind, but I would ask Senator Murkowski to go ahead.

Senator MURKOWSKI. I am happy to defer to you first, Mr. Chairman.

Senator ROBB. Senator Pell.

The CHAIRMAN. Thank you very much. I am very glad that Senator Robb has arranged for this hearing for our committee. Ambassador Gallucci labored hard to hammer out the agreement. He worked out this detailed arrangement following former President Carter's efforts to defuse a volatile, deteriorating situation.

Some central questions emerge with regard to this agreement. First, is the agreement likely to move North Korea toward becoming a responsible member or player on the international stage? Is it likely to move North Korea away from the quest for nuclear weapons? If North Korea already has nuclear weapons, does it legitimize retention of those weapons by, really, an outlaw regime? If so, does it, in effect, send a message to other nations that the United States is willing to tolerate the development and retention of small nuclear arsenals by nations that might be tempted, in fact, to use those weapons?

In the end, will this agreement serve to promote a stable world nonproliferation regime or will it undermine such a regime?

These are difficult questions and I look forward very much, indeed, to Mr. Gallucci's comments on them.

Senator ROBB. Thank you very much, Senator Pell.

Now we turn to the ranking member for his last opening statement in that capacity. We are pleased to hear from you, Senator Murkowski.

Senator MURKOWSKI. Thank you, Senator Robb. We have never had a problem between us over who is going to have the last word and I am sure I am not laying that off on myself by any means. We have had a great working relationship and I look forward to continuing to work with you and Senator Pell. It has been a pleasure to be a part of your committee over these years and I look forward to continuing our relationship.

The CHAIRMAN. Thank you.

Senator MURKOWSKI. I, too, want to welcome you, Mr. Ambassador. I think this is an historic hearing of great importance with regard to the future security of North Korea and the region. I am sure the perception of our second guessing the agreement and questioning specifics comes as no real surprise. I do want to assure you that my opening statement is more or less in the form of questions because oftentimes in this committee we have witnesses who give extended long answers and we don't get to all of our questions. So I have tried to put my remarks together in such a way as to make sure my questions are already out there. So I hope you will understand my intent. You are quite free to address them in your response, or I will have a second chance when the questioning comes around.

In any event, because of the importance of this hearing, I think the Congress has an obligation and a duty to look very carefully at the terms and conditions of the Agreed Framework. The administration has concluded this framework with the North Koreans

and this really provides us with the first opportunity to address some specific questions.

The answers to those questions I think are not derived from reading the agreement itself. I read the document carefully, and I guess my first question is why is this not a treaty or even an international agreement? It is called an "Agreed Framework."

Now I happen to be a banker by profession and not a lawyer. But in "Black's Law Dictionary," there is no definition for an "Agreed Framework."

I have had some discussions in New York at the United Nations relative to how this was determined, and one can come to the conclusion that they were looking for some kind of structure and they called it an Agreed Framework, and that's what we've got.

I want to see North Korea bound by the terms, but I question whether we have in this reference to an Agreed Framework any binding agreement. I would appreciate you addressing that.

I think something of this importance and significance personally should have been submitted to the Congress for approval. But that was a decision that was made by the administration and I hope you can enlighten us here.

From the standpoint of the U.S., why is our nation solely bearing the responsibility for this framework? If one reads the agreement, the agreement is between North Korea and the United States and it binds no other allied country. I am concerned because this was bilateral rather than multilateral. Even though the threat of nuclear capability is certainly a regional and worldwide problem, it is the United States that has had to make all of the promises—promises for a light water reactor, promises to deliver oil, right down the line.

Our President has even seen fit to write a separate letter of assurance to the North Korea leader, Kim Jong II, basically guaranteeing that if the United States could not convince the international consortium, the United States would still live by the commitments in the Agreed Framework. The President stated that he would use his office to the full extent of his authority, to provide and be forthcoming on the terms and conditions of the Agreed Framework. Where is the letter from Kim Jong II suggesting that North Korea will live up to its obligations under the framework agreement?

I find it rather curious that there is a one-way letter.

How much is this going to cost? Where is the money going to come from? Vague numbers have been thrown out about the early cost of the agreement. I think the congressional committees should know in advance whether there is going to be any reprogramming of funds before they are used, even indirectly, to implement the framework agreement.

I don't know if you saw the "Washington Post" this morning. It says, "U.S. Tickets Funds for North Korea." We all read the papers and have our own opinions on their accuracy or inaccuracy. But it says here that, "A separate Department of Energy plan to assist North Korea in improving conditions at a storage pond for the plutonium laden fuel rods, as the deal requires, will be funded from discretionary DOE accounts and also will not be subject to Congressional review," officials said. Why is it inappropriate for congress-

sional review of some \$5 million to \$10 million of expenditures by the Department of Energy?

I don't think the Department of Energy was a party to the deal. It seems like the State Department said to the Department of Energy that we're talking about a commitment of oil for 5 to 10 years, we're talking about light water reactor technology and the obligation is the Department of Energy's.

I think that that deserves some examination.

Where is the technology coming from? These are advanced technology reactors. Are we going to see the use of American technology in North Korea, something that we would prohibit in some of the countries where we have less than full and open relationships?

Are the South Koreans going to build it? Are we going to get the benefit of U.S. technology and will the U.S. nuclear industry benefit from this?

What happens in 5, 6, or 7 years if North Korea reneges on its commitment? If they do, it seems like we are right back where we started in 1993, when North Korea first refused the IAEA request to inspect the suspected waste sites. And they did refuse. One could conclude that the only difference between 1993 and 1999 is that the North Koreans will be less susceptible to economic sanctions because we would certainly have propped up the regime with a substantial supply of oil and economic concessions during that timeframe.

I am curious to know why the U.S. position changed.

You will recall that back in March, 1994, Under Secretary Lynn Davis testified before this committee. Chairman Robb and I were at that meeting. She testified that the North must—and this is a quote—"the North must \* \* \* implement its IAEA full-scope safeguards agreements, including special instructions and other measures needed to clear up past discrepancy \* \* \* As the DPRK takes these steps, we are prepared to reciprocate \* \* \*"

I think we have certainly compromised. We have gone a long way. You will recall in the negotiations the North Koreans wanted to exclude South Korea from the discussions and we agreed. We consulted with the South Koreans during that timeframe, but it was basically the U.S. that was up front.

The North Koreans complained that our military exercises were not conducive to the negotiations. So we canceled them.

Then I think we saw in what I consider rather classic negotiation tactics that the North Koreans brought in a completely new issue, which was the light water reactor. In return, the U.S. agreed to the reactor, interim energy and diplomatic and economic concessions—all before the North Koreans fully implemented their obligation under the Nuclear Nonproliferation Treaty.

This committee is concerned with the national security interests of our Nation. And it seems to this Senator that our negotiations gave up virtually on every front. North Korea's real concessions come down the line. They come down the line in 5 to 10 years. In the meantime, we will significantly have aided their economy with the oil and the new power plants. As Senator Robb indicated, it is 50,000 tons and then up to 500,000 tons annually thereafter. That is about \$50 million a year.

The problem that I have is that the IAEA, an arm of the U.N., does not get access to the two nuclear waste sites. These are the ones they have hidden for the last 2 years. These are the ones they have refused to allow our inspectors into until the first light water reactor is substantially completed.

Who is going to determine what stage of completion is going to trigger the inspections? I don't know. I am told that this may be at least 5 years away.

What is the importance of inspecting the two sites? Without the inspections, we don't know whether they have developed a nuclear capability and, if so, to what stage. This so-called Framework does not address what we are going to do if we discover that they do have a nuclear device.

Why didn't we insist that they come clean, as we did with South Africa? South Africa accepted those conditions as the price of joining the nonproliferation regime.

So now we have made an exception with North Korea.

It seems to me that what we have here is a situation where North Korea is freezing, rather than halting, its nuclear weapons program in the first several years of the agreement. Everything that is frozen can thaw, I know. I live in the North. [General laughter]

This concerns me.

We gain no rollback in their program until after we have delivered almost everything that the North Korean negotiators insisted upon. And the Agreed Framework does not even mention North Korea's dangerous potential for proliferation through exports to other nations that we would consider dangerous.

The track record of North Korea is one of unpredictability. We have seen that. We have seen that in the Rangoon incident. We have seen that with Korean Airline Flight 858 back in 1987.

I find another curious thing. We have been involved with an effort to set, if you will, a road map with regard to Vietnam, and our trade embargo on Vietnam was lifted back in February. It has been a long road. It has been a road where the goal posts have changed.

The Vietnamese have taken many good faith steps in the area of our demands, including accountability of MIA-POW's.

They have started pursuing a more market oriented economy, and this was all prior to lifting of the trade embargo. Vietnam's good faith efforts have continued, but we have not opened up a liaison office yet. We have not started negotiations of a trade agreement yet.

But here we are proposing in this Agreed Framework with the North Koreans that, and I quote, "The two sides will move toward full normalization of political and economic relations."

It is interesting to compare our progress rate. The framework further specifies, and I quote, "Within 3 months of the date of the document both sides will reduce barriers to trade and investment." That is a rather curious comparison. And again I quote: "Each side will open up a liaison office in the other's capital following resolution of consular and other technical issues." This is way, way ahead of Vietnam.

So it seems like a very fast pace for a country with whom we have had no history of good faith negotiations.

I also find it rather curious as we look at the unaccounted for servicemen in wars over the years. When we look at Korea, 8,177 military men are unaccounted for, approximately—the guess is, I am told—about 7,000 of those in North Korea. This is not even mentioned as a consideration in the agreement. It is much, much higher than in Vietnam. The unaccounted for in Vietnam are about 2,200.

I find it curious as to why that factor was overlooked in North Korea when it is so much a factor today in Vietnam. Are we asking for their cooperation and have they pledged it? I'm not aware of that.

So, Mr. Chairman, I think it is time to take a good, hard look at this policy. I am here to listen to the Ambassador in spite of my extended remarks and to the panel of experts. I don't think it is time for rash decisions or threats, and I am not sitting here saying we should cancel the agreement. But I think we should understand it and its implications and why, specifically, we have seen fit in our negotiations to exempt North Korea from the IAEA, as the only country that has such an extended and rather lenient exception and why our allies, the Chinese, the South Koreans, Japanese, and ASEAN countries are not party to the formal agreement.

I am certainly prepared to work with the administration and Ambassador Gallucci for ways to address some of the flaws in the framework. But, as I said before, I really think this should have been a multilateral effort. The U.N. Security Council I think has an obligation and should have given it real teeth by passing a resolution telling the North Koreans that they must live up to their own obligations or simply face sanctions.

So with that bottomline referencing my evaluation and second guessing your negotiations, I will conclude my statement and wish you a good day.

I do want to thank you for your efforts and that of others to allow Senator Simon and me to go into North Korea, which we plan to do by surface transportation sometime about December 10 or 12, and the decision of the Department of Defense to fly us out. So it appears that we have a round trip ticket, and that is a good sign.

Thank you, Mr. Chairman.

Senator ROBB. Thank you. Anticipating your return to chair this committee, we would hate to have to have someone act in your stead while you were unavailable to do so.

Senator MURKOWSKI. Oh, I trust you would send somebody after me. [General laughter]

Senator ROBB. Certainly within the next 2 years we could make appropriate arrangements. Particularly if the numbers got any closer, it might have some impact on our timing. [General laughter]

Recognizing that this is a very serious subject and before we give Ambassador Gallucci an opportunity to defend himself, I want to ask Senator Gregg if he would like to make an opening comment.

Senator GREGG. Thank you, Senator Robb. I appreciate the chance to sit in our this hearing because it is an issue which I am very concerned about. I think everyone is concerned about this.

The way I look at this agreement is that the price is high. It appears to be about \$4 billion plus, of course, the fact that the United States is abandoning what has officially been our position. We are

proposing building a light water reactor where we, for example, have told the Germans that they should not be building such reactors in other countries. Also, 500,000 tons of oil, heating oil, will be supplied during the period the reactor is being built. That would heat New Hampshire for a heck of a long time. To explain to the New Hampshire taxpayer why we are sending this oil is something that I think is incumbent upon all of us to be able to justify.

So if the price is so high, and it is high, obviously, you have to ask yourself what do you get in return for it. If the return is that North Korea has abandoned its weapons program and is no longer presenting a nuclear threat, then it is worth it.

As I look at this agreement, however, that question remains unclear, whether that could be the conclusion.

The essence of the agreement, as I understand it, is that North Korea will not refuel its small reactor and will not use the associated reprocessing plans, but it will freeze its two large reactors and related facilities. That, obviously, if it actually happens, would be a major plus. But the questions which are raised by the agreement, which had been alluded to by the speakers who have already made their comments, are so significant that you have to wonder whether that is going to occur.

For example, as I understand it, the IAEA does not have the capacity to go in under this agreement and look at the waste sites—if it could even find the waste sites—to look at the waste sites for a period of 5 years or until there has been significant construction of the first stage of the light water reactor.

What happens if, at that time, we determine that they have diverted enough plutonium to build a couple of bombs? This will be 10 years from now, probably. Are we going to take action at that time?

That is a fairly significant question. And yet, it does not appear to be resolved as to whether we would or what would happen.

There is also the fact that the issue of launch vehicles does not appear to be addressed in this agreement in a manner that resolves the question of whether or not North Korea has the capacity to produce launch vehicles and, if they do have them, what they can put on them.

There are the additional issues which were raised by the Senator from Alaska with which I wish to associate myself and do not want to repeat. But all of these questions come to the fore, and that is what this hearing is about, obviously, to try to get more definition into what actually the agreement is.

But the bottomline comes down to this: Did we accomplish what we said we were going to accomplish? Is North Korea less of a nuclear threat? And is that reduction in nuclear threat significant enough to justify the price that is being paid both in dollars and in relationships to enter this agreement? Also, is the language of the agreement strong enough to be effective if North Korea decides not to follow the terms of the agreement? Or does it result in forcing action which will curtail irresponsibility or activity which involves North Korea continuing its nuclear program in a threatening way?

It appears to me what North Korea wanted out of this agreement was two things. They wanted, first, money and economic assist-

ance, and, second, I think they wanted to keep their nuclear program, the nuclear weapons which they already had in place. This agreement is prospective, and I suspect that North Korea got both. They got the weapons they presently have and they got the money.

I am not sure that in those terms it is a good agreement, though I am willing to listen and look forward to the administration's explanation.

Senator ROBB. Thank you, Senator Gregg.

Ambassador Gallucci, you know from your previous appearances before this committee that there are a number of questions and you have one of the most sensitive agendas of anyone in the administration, at least in terms of justifying or explaining some of the things that have taken place. I think there is a basic underlying consistency to the questions that have been raised to date. I know that you are prepared to address many of those. We will give you a chance to discuss all of them. But at this time we would be very pleased to have your opening statement after which we will have a series of questions.

Ambassador Gallucci, we thank you for coming. We are delighted to hear from you.

#### STATEMENT OF HON. ROBERT L. GALLUCCI, AMBASSADOR AT LARGE

Ambassador GALLUCCI. Mr. Chairman, members of the committee, I am very grateful for this opportunity to appear before you this morning on this topic. I would even go beyond grateful to say that I am eager to have the opportunity to address this topic and discuss it with you this morning.

With your permission, I will submit for the record a longer, more formal statement and keep my remarks I hope mercifully brief.

Senator ROBB. Without objection, the entire statement will be included in the record.

Ambassador GALLUCCI. I also, Mr. Chairman, want to thank you for having the flexibility to allow me to do what I needed to do yesterday. Thank you very much for that.

I want to focus this morning on the October 21, U.S.- D.P.R.K. Framework and what it accomplishes in its broader implications for our interests, our security and that of our allies in Asia.

First, the Agreed Framework addresses all our concerns about North Korea's nuclear program, about the current nuclear program, about the potential future plutonium production and export possibilities of North Korea and about past production of plutonium. It achieves more than we thought possible when we first began talking to the North Koreans some 18 months ago.

With respect to the present nuclear program, the Agreed Framework prohibits any more reprocessing or separation of plutonium. The spent fuel rods in the storage pond, which contain up to 30 kg. of plutonium, will be safely stored and eventually shipped out of North Korea.

The Agreed Framework prohibits the restart of the 5 megawatt research reactor which could have produced about a bomb's worth of plutonium each year.



The Agreed Framework seals the radio chemistry laboratory—that is the plutonium separation facility—and subjects it to IAEA inspection.

With respect to the future program, the Agreed Framework freezes construction of the two larger research reactors, production reactors, the 50 megawatt reactor and the 200 megawatt reactor. These reactors could have produced almost 200 kilograms of plutonium each year. That is enough for a substantial nuclear weapons stockpile, perhaps as much as 30 nuclear weapons a year. That is also enough for a substantial export capability in plutonium.

Moreover, the Agreed Framework calls for eventual dismantlement of all gas graphite related facilities in North Korea.

With respect to the past, under the Agreed Framework, the D.P.R.K. accepts full-scale IAEA safeguards, including all measures that the IAEA may deem necessary to resolve questions about the initial plutonium inventory. As you know, implementation is not required immediately under the Agreed Framework. But it is required before any significant benefits—before any significant benefits—flow to North Korea.

In return for this, North Korea receives some significant benefits. The United States would lead an international effort to provide North Korea with more proliferation resistant light water reactors and alternative energy supplies, heavy fuel oil, over the next several years. Under the terms of the agreement, the light water reactor project will begin, but there will be no delivery of nuclear components until the D.P.R.K. is in full compliance with all its safeguards obligations. I repeat: there will be no delivery of significant nuclear components until the D.P.R.K. is in full compliance with all its safeguards obligations.

The centerpiece of our part of the implementation will be the creation of the international consortium which we are calling the Korean Energy Development Organization, or KEDO. The purpose of forming this consortium will be to achieve a broad international participation in this effort.

The United States, Republic of Korea, and Japan will play leading roles in the consortium. South Korea will have a central role in both the financing and construction of the light water reactors.

Finally, under the terms of the agreement, over time, the United States will move toward more normal political and commercial relations with the D.P.R.K.

We believe the Agreed Framework is an important step toward resolving the nuclear issue and could lead to resolution of other issues of concern. Let me explain that.

First, on the nuclear issue, it requires the North Koreans to go beyond existing international obligations. Under the Nonproliferation Treaty, North Korea could keep its existing infrastructure and build up a stockpile of plutonium, albeit under safeguards. Building up a stockpile of plutonium under safeguards would not be a situation or an outcome we or our allies would have welcomed. But it would have been consistent with the Nonproliferation Treaty and international safeguards.

This is why the U.S. has agreed to lead an international effort to provide the D.P.R.K. with light water reactors and alternative energy. In short, Senators, we are getting a lot more than the NPT

or international safeguards could give us to protect us and our allies against a threat of the proliferation of nuclear weapons. That is why the move to provide the oil and to provide the light water reactors.

Quite frankly, we would have preferred that resolution of the past would have been required earlier in the process of implementation. But just as clearly, we decided that the spent fuel in the pond that contains 30 kilograms of plutonium—30 kilograms, not 5, 6, or 7 kilograms, but 30 kilograms—and the potential of those reactors, the larger reactors, to produce a couple of hundred kilograms a year, was much more important and, more precisely, more pressing an issue.

We decided that we would go after real nuclear weapons capability. We had to be concerned about what was of significance strategically. We were. We prioritized that objective.

Information about past nuclear activities that may be obtainable from inspections of those waste sites is something that we very much want. But that information is not perishable. Those waste sites are not going anywhere. They will be there in 2, 3, 4, 5, 6, and 7 years. The cost in delay is political and it is not—I do not want to trivialize that. We would have liked those inspections to occur sooner. But it is a political cost. There is not a substantive disadvantage to our security or to our allies.

More broadly, the Agreed Framework opens the possibility—and I want to emphasize the word “possibility”—of gradually opening the way for all countries in the region to establish more normal political and economic ties with North Korea. That, Senators, would serve our broader interests in regional stability and prosperity.

This point goes to the other areas of D.P.R.K. behavior outside the nuclear area that concern us. Particularly here I want to mention the development of long-range missiles, the possible export of those missiles and missile technology, and the threatening forward deployment of their conventional forces. These are issues of grave concern to us which we believe we will have a possibility of dealing with because of the Agreed Framework. We believe we can only get at these and other important issues through engagement with the D.P.R.K. and implementation of the commitments undertaken in Geneva.

We intend to do just that.

Finally, I want to emphasize that we entered into discussions with the North Koreans and signed the Agreed Framework without any uncertainty or delusions about past North Korean behavior. The Agreed Framework is not based upon trust. The IAEA has been on the ground. It is on the ground now and it is capable of monitoring the freeze. The IAEA presence will expand to effectively monitor the provisions of the Agreed Framework.

We also have our own independent national technical means to supplement the IAEA's inspections.

Moreover, the Agreed Framework is structured so that we can withhold cooperation at any point that we determine that North Korea is not meeting its obligations under the agreement. If the D.P.R.K. reneges on the deal it will have gained little. I do believe that the fuel shipments should not be considered substantial or sig-

nificant. They will have gained little, and other steps we would plan on taking would be easily reversible.

Let me turn to implementation.

The best indicator of North Korea's intentions is how it implements the terms of the Agreed Framework. This is especially true because the Agreed Framework will be implemented over a substantial period of time, perhaps as many as 10 or 12 years.

So far, at this very early stage, things have progressed smoothly. I will detail that in the written statement. But let me make a couple of points here.

The nuclear freeze is now in place—at the reprocessing facility, at the 5 megawatt reactor, at the 50 megawatt reactor and at the 200 megawatt reactor. The IAEA has verified that. IAEA-D.P.R.K. discussions on additional monitoring measures are going well we understand from the agency.

So are discussions between our spent fuel experts and those of the North Koreans. The purpose of these discussions is to work together to store the spent fuel safely and in a manner which will allow eventual shipment of that spent fuel out of North Korea.

We had a large, interagency team visit North Korea. For the first time ever Americans went to Yongbyon and inspected the spent fuel storage pond. It was a team of Departments of Energy, Defense, and State Department and Arms Control Agency energy experts.

We are now moving forward with discussions on the light water reactor project this week in Beijing. Talks in Washington are scheduled for next week on establishing liaison offices in Washington and Pyongyang. Finally, we are planning the initial steps to lift some restrictions on commercial relations.

In conclusion, Mr. Chairman, the Agreed Framework is broadly in our national security interests and that of our allies, particularly South Korea and Japan. It protects the international nonproliferation regime and holds the promise of opening North Korea to political and economic influence that can be used to reduce tensions on the Korean Peninsula and stem a provocative ballistic missile development and export program.

The Agreed Framework deserves the support of the Congress and the American people.

Mr. Chairman, that concludes my prepared remarks.

[The prepared statement of Ambassador Gallucci follows:]

#### PREPARED STATEMENT OF AMBASSADOR ROBERT L. GALLUCCI

Mr. Chairman, I welcome this opportunity to discuss our efforts to resolve the North Korean nuclear issue. This is a problem that developed over the last decade and that previous administrations have worked to resolve.

I have been intimately involved in this issue since June 1993 when the Clinton administration began bilateral discussions with the Democratic People's Republic of Korea (DPRK) in New York. After on again, off again negotiations over the next 15 months, we concluded the October 21 U.S.-DPRK Agreed Framework in Geneva. That document represents an important step towards resolving our differences with the DPRK.

Today, I would like to discuss: 1) the contents of the agreed framework and particularly what it accomplishes; 2) why we, and our close allies in Asia, believe the agreed framework is an important step in the right direction; and, 3) steps both sides have taken to begin implementation of the framework since it was concluded on October 21.

## DPRK OBLIGATIONS UNDER THE AGREED FRAMEWORK

Mr. Chairman, our goal has been to head off the potential threat posed by North Korea's nuclear program. To do so, we have formulated an approach to deal with the current nuclear program of the DPRK, the potential future growth of that program, and the program's past, specifically, how much plutonium did the North produce in the late 1980's. That approach is embodied in the October 21 U.S.-DPRK Agreed Framework which, in our view, addresses these concerns. Indeed, the agreed framework achieves more than we and the international community thought possible when the U.S. first began talking to North Korea some 18 months ago.

One of our main concerns about the DPRK's current nuclear effort has been the disposition of the spent nuclear fuel currently stored in the pond at the 5 megawatt (mw) research reactor at Yongbyon. That fuel contains up to 30 kilograms of plutonium. Our objective was to make sure that fuel was not reprocessed, and that the plutonium was not separated. Under the agreed framework, the fuel will remain safely stored in the pond and will eventually be shipped out of the country.

A second objective was to ensure that no additional plutonium was produced, specifically, that the North did not restart its research reactor. Under the agreed framework, that reactor will remain shutdown.

Third, we wanted to make sure that the reprocessing facility—which the north calls the radiochemical laboratory—would remain dormant and that there would be no reprocessing of fuel from any source. Under the agreed framework, that reprocessing facility will be sealed and subject to inspection as deemed necessary by the international atomic energy agency (IAEA) to confirm that it remains shutdown.

As for the future, our concerns focused on two new nuclear reactors currently under construction, a 50 mw reactor and a 200 mw reactor. Those reactors would have been completed sometime in the next few years. Once operational, they would have been able to produce hundreds of kilograms of plutonium by the end of this decade. As a result, the North might have produced a substantial stockpile of nuclear weapons and could have become an exporter of plutonium to other countries. Under the agreed framework construction of both these facilities is frozen. The framework also provides for the eventual dismantlement of these reactors, the existing research reactor, the reprocessing plant and all other facilities associated with the North's current fuel cycle.

With regard to past DPRK nuclear activities, our objective has been to verify its initial inventory of nuclear material—how much plutonium it actually separated. In other words, we were seeking to answer the question: was the initial declaration of the DPRK to the IAEA an accurate one or did it separate kilogram quantities of plutonium? The IAEA had reason to doubt the DPRK's declaration and requested access to two nuclear waste sites which might provide further information. The DPRK refused this request.

Under the terms of the agreed framework, the DPRK accepts the requirements of the IAEA for full scope safeguards. It agrees to take all steps that may be deemed necessary by the IAEA to resolve questions about its initial inventory. The implementation of those steps, as you know, is not required until later in the settlement process.

## WHAT DOES THE DPRK GET IN RETURN?

In return for DPRK agreement to freeze and eventually dismantle its current program and resolve concerns about the past, the United States has agreed to lead an international effort to provide the DPRK with other sources of energy. That means more proliferation resistant light water nuclear reactors (LWR) and heavy fuel oil. The heavy fuel oil is a near to mid-term substitute for the DPRK's operating nuclear research reactor and the two other reactors which would have been completed over the next few years. These reactors would have provided the DPRK with some 255 megawatts of electrical generating capacity.

With respect to the light water reactors, the DPRK, in agreeing to completely abandon its gas graphite-moderated reactors and the prospect of building them in the future, will receive a light water reactor project rated at 2,000 mw, or two 1,000 mw electric light water reactors. These reactors will be provided over some eight to ten years, the normal delivery period for reactors of that size.

Under the terms of the agreed framework, at a point when there has been some substantial investment in the LWR project, the DPRK commits to take whatever steps the IAEA requires to resolve past discrepancies in its plutonium declaration, including special inspections. That time will come before any nuclear equipment or technology is delivered to the DPRK for the LWR project. After the DPRK is in full compliance, the project can proceed. As key nuclear components for the first reactor are delivered, the spent fuel will be shipped out of the DPRK. Dismantlement of ex-

isting facilities will begin with the completion of the first reactor and end with the completion of the second reactor.

Our plan is to establish a multilateral consortium, the Korean Energy Development Organization (KEDO), to implement some provisions of the agreed framework, including the LWR project and heavy oil shipments. The United States, ROK and Japan will play a leading role in the consortium. The ROK will also play a central role in financing and construction of the LWR project. KEDO's structure will provide for broader international participation. We have made good progress in discussions with the ROK and Japan on establishing KEDO and plan to meet again in December to continue our consultations.

Finally, under the terms of the agreed framework, the United States and North Korea agreed to take initial steps towards a more normal political and economic relationship. Those steps include reducing some barriers to trade and investment within three months and moving towards the establishment of liaison offices in each other's capital. Let me emphasize these are initial steps. Further steps will only occur as progress is made on issues of concern to both sides.

#### ASSESSING THE AGREED FRAMEWORK

Mr. Chairman, any reasonable assessment of the agreed framework must balance what it achieves with the steps we have to take to secure our objectives. Our view, and I might add the view of our close allies—Japan and the Republic of Korea—is that the agreed framework is an important step towards resolving the North Korea nuclear issue. It is also the best vehicle to resolve other problems which separate North Korea and the international community.

We arrived at this conclusion for two reasons. First, the framework provides for a solution which goes beyond the requirements of existing international non-proliferation obligations. Under the nuclear non-proliferation treaty (NPT), North Korea would be allowed to keep its existing gas graphite reactors and to accumulate stockpiles of plutonium, albeit under IAEA safeguards. Under the agreed framework, North Korea must freeze and dismantle its existing nuclear facilities. The DPRK will not separate any additional plutonium and eventually will ship out existing nuclear material. We have promised to lead an international consortium to provide other sources of energy—including more proliferation resistant reactors—only because the DPRK will take these far-reaching steps.

Quite frankly, we would have preferred that, as a first step in this process, the DPRK resolve international concerns about its past activities by allowing IAEA special inspections. We recognize the potential dangers posed by the less than 10 kilograms of plutonium the north may have produced in the past and the political importance of special inspections. However, there were clearly more pressing priorities: preventing the DPRK from reprocessing the spent fuel rods in its storage pond and from producing any additional spent fuel from its reactors. We decided that these problems had to be dealt with in the near-term, particularly since it is a scientific fact that information at the suspected waste sites is not perishable.

Second, our interests in Northeast Asia, those of our close allies and those of other Pacific Rim States would be best served by increasing stability and fostering economic growth. The agreed framework may make it possible, and I want to emphasize possible, to gradually open the way for all countries in the region to establish more normal political and economic relationships. That would serve everyone's broader interests in regional stability and prosperity. I would like to note in this context that steps towards improving North-South relations, as specified in the agreed framework, will be an important factor, both in resolving the nuclear issue and in serving these broader goals.

This path will be a difficult one to follow. There is still much about North Korean behavior outside the nuclear area that should concern us. Indeed, as I have repeatedly emphasized, our "broad and thorough" approach to resolving this issue requires that we continue to address those issues of concern. The most prominent two examples are North Korea's ballistic missile activities and its threatening conventional force deployments. The fact that the Geneva agreement focused on nuclear matters should not be taken to mean that we are not concerned with North Korean behavior in these areas. Indeed, it is our view that we can only get at these other important issues through engagement with the North Koreans and implementation of the commitments undertaken in Geneva.

In any event, our close ties with the Republic of Korea are and will remain firm. That relationship is built on a security alliance of four decades, on increasingly close and dynamic economic ties and on growing cooperation on important international issues.

While the framework may be in our interests, we entered into this agreement without any uncertainty about past North Korean behavior. The agreed framework is not based on trust. IAEA officials are already on the ground in North Korea to verify that the program remains frozen. Additional IAEA measures to monitor the freeze are under discussion with the DPRK. Also, the United States has its own national technical means for monitoring the DPRK's nuclear facilities. Finally, we have structured the agreed framework so that we can withhold cooperation at any point we determine the DPRK is not meeting its obligations. If the DPRK reneges on the deal, it will have gained little that is not reversible save some fuel shipments that represent only a fraction of its energy requirements.

#### IMPLEMENTATION OF THE AGREED FRAMEWORK

The best indicator of North Korea's intentions will be how it implements this agreement. Our past experience has taught us to be extremely cautious. This agreement, in particular, will require a long and potentially complicated process of implementation. So far, implementation of the framework has proceeded without difficulty in a number of key areas:

- *Nuclear Freeze.*—The DPRK has ceased construction at its important nuclear facilities. We understand that recent discussions between the IAEA and the DPRK on enacting additional measures to monitor the freeze went well. We expect another meeting to occur the beginning of next year. In the meantime, IAEA inspectors remain on the ground at Yongbyon to monitor North Korean activities.

- *Spent Fuel Storage.*—The United States is prepared to provide the DPRK with technical assistance in safely storing its spent fuel in a manner consistent with eventual shipment to another country. We held productive technical discussions in Pyongyang from November 14 to 18. During those discussions, our experts visited the Yongbyon nuclear facility, specifically the 5 mw reactor and spent fuel storage pond. We expect another round of talks in mid-December.

- *Alternate Energy.*—We are nearing final arrangements for the first shipment of heavy fuel oil, 50,000 metric tons, to North Korea by January 21, the time period specified in the agreed framework. While the U.S. will be funding that shipment, the burden of future shipments will be borne by the international consortium.

- *LWR Contract Talks.*—Under the agreed framework, the DPRK and KEDO are required to reach agreement on a LWR supply contract by April 1995. We will begin those discussions with the DPRK and then hand them over to KEDO once that organization is established. An initial administrative meeting is now underway in Beijing.

- *Establishing Liaison Office.*—Following up on our September experts meeting in Pyongyang, we will be holding a second meeting with DPRK experts from December 6-9 in Washington D.C. The two sides will discuss consular and technical issues involved in setting up liaison offices. We will also brief the DPRK on initial steps we will take to begin lifting restrictions on normal commercial relations between our two countries.

#### CONCLUSION

Mr. Chairman, in closing, I would like to emphasize that the October 21 Agreed Framework, is based on a hard-headed assessment of our own security interests, close consultations with our regional allies—particularly Japan and South Korea—and a realistic view of North Korea.

The agreed framework is a deal that advances our interests. It requires North Korea to take steps which go beyond existing international non-proliferation obligations to resolve the nuclear issue. That is why we are willing to lead an international effort to provide the DPRK with energy sources. The agreed framework may also open the way to addressing other issues separating North Korea from the international community. Let me say once more that this framework is not based on trust. The DPRK has agreed to allow the IAEA to monitor the freeze on its facilities and we have the added assurance of our own national technical means. Finally, the framework is structured so that both sides must move down the road to implementation simultaneously.

We understand that there is a long road ahead of us as we implement this framework. We look forward to working closely with Congress in the days ahead.

Ambassador GALLUCCI. I took extensive notes on the questions that the Senators put and I would be prepared either to have them put again or to proceed down the list, however you prefer.

Senator ROBB. Ambassador Gallucci, I think it might make sense, since some of the questions have already been propounded to you, to just tick off some of those. We will certainly follow up on those that have any unanswered elements to the questions.

Ambassador GALLUCCI. Very good. Thank you, Senator.

Some of the statements I will, with your permission, turn into questions.

Senator MURKOWSKI. Don't ask us to do that. That's not fair. [General laughter]

Ambassador GALLUCCI. First is the comments about the importance of good faith behavior by the North Koreans in this and the assumption that is made by some of the critics of the Framework that the United States, Japan, Korea, and others must perform first, before North Korea has to do anything.

I would say that it is much more heavily reversed. It is true that in the first 3 months the United States will be providing 50,000 tons of heavy oil at a cost of between \$5 and \$6 million and that there will be heavy oil shipments, up to 100,000 tons, by the end of October 21, 1995, and there is heavy oil to be delivered. And, over a period of years, they will be building a light water reactor, two light water reactors, in North Korea.

But, Senators, the first thing that happens is the North Koreans agreed not to reprocess the fuel. One of the things that I have found somewhat frustrating is the failure of all of us to take account of what the North Korean program was. It was to reprocess the fuel. They are not reprocessing the fuel.

Senator ROBB. But if I may interrupt for one moment—

Ambassador GALLUCCI. Please.

Senator ROBB [continuing]. By what authority would they have reprocessed the fuel under existing agreements if they had adhered to those agreements?

Ambassador GALLUCCI. Senator, unless you believe that North Korea is already bound by the North-South Declaration on Denuclearization which prohibits all reprocessing—and that is a bilateral North-South agreement and there is disagreement over that—there is nothing in the Nonproliferation Treaty or in their safeguards obligations that prohibits the reprocessing of spent fuel. There is nothing that prohibits them from restarting the reactor.

Senator ROBB. But you are saying putting aside the North-South Declaration. I realize there is some disagreement, but that is really why there is so much skepticism about whether or not they are going to live up to anything that they have said in this whole series of negotiations or implicit promises.

Ambassador GALLUCCI. Senator, I would make a distinction between a bilateral agreement between North and South, which has yet to be implemented—both sides would recognize that the steps necessary to implement the North-South agreement have not yet been taken.

Senator ROBB. But they have told us repeatedly that they are going to improve their performance in the North-South dialog, and what have you, and there is no followup.

Ambassador GALLUCCI. Senator, I do not want to argue with you on the point of whether the North Koreans should or should not abide by the North-South Declaration on Denuclearization because

I believe they should. I am attempting to answer the question of what agreements would stop them. I note that first but note that it has different standing in the international community than their NPT or IAEA safeguards obligations, neither of which would have prohibited the reprocessing of the fuel, neither of which would prohibit the restart of the 5 megawatt reactor loading and the accumulation of about 5 or 6 kilograms of plutonium a year in that 5 megawatt reactor.

The completion of the 50 megawatt reactor, which would produce between 50 and 60 kilograms of plutonium a year and the completion of the 200 megawatt reactor, which would produce about 110 to 120 kilograms of plutonium a year, depending on how it is run—that is the track that the North Koreans were on. All of that is frozen in place.

I would say that was a substantial amount of performance up front, immediately, in place, now, monitored—not a matter of good faith—monitored by the IAEA on the ground, in place at some of these facilities continuously and at others determined by the IAEA as necessary to monitor the agreement. I would call that a substantial amount of cooperation or performance up front.

Second, I would note about our own performance, the performance of the United States, Japan, and others, who will participate in the light water reactor project is going to take a number of years. As that performance actually is consummated, that is when additional performance by the North Koreans comes into play, including the shipment of the spent fuel and the conduct of special inspections.

But let me move on.

The first point is I would sum up by saying there is a substantial amount of performance up front by the North Koreans before there is substantial performance by the West.

As for the second point, Senator, I believe you made the point that we could confront a situation in the future in which we had gone a number of years down the road and then we found North Korea, perhaps not to our surprise, not complying with the agreement and that this noncompliance would be the worst case. I would argue to you that this would not be the worst case.

I would argue to you that we went to some trouble to frame an agreement which took account of the character of our negotiating partner and the North Korean's past history. That is what I meant in my statement about not being deluded about their past history. We recognize their compliance will have to be verified and we are not certain of it.

This is why the agreement does not leave us or our allies disadvantaged at any point if the North Koreans walk away. It is our view that, if that happens in 5 months, they will have gotten some heavy oil, not useable for anything other than heating and not a significant amount in any terms whatever, financially or in terms of their needs, and that's all they will have gotten. In the meantime, their program will have been frozen. That research reactor otherwise would have been restarted immediately and reprocessing and separation of additional plutonium would have taken place.

If 5 years down the road—and, by the way, the 5 year timeframe is a timeframe that we estimate based on delivery schedules of



light water reactors. If we want those sites inspected sooner, we have to deliver light water reactors quicker. We did not think they could be delivered quicker. That is why we have used the 5 year figure. That is an estimate.

But if at that point they do not comply, then they get nothing in terms of any significant nuclear equipment under the light water reactor project. They will have some large buildings, they will have some of what we normally call balance of plant conventional equipment, but they will not have any significant nuclear equipment for the reactors.

So I would say we will not be disadvantaged. We will have 5 years of nonoperating facilities, no separation of plutonium, and I consider that a real plus, certainly when compared to the track we were on before.

Senator, you suggested that maybe this was a shift away, that this agreement reflected a shift away from the approach of sanctions and penalty of a nonproliferation policy. I would suggest to you that this agreement reflects the proper blend of sanctions and inducements to have states come into compliance with not only their international agreements but also to take additional steps to reduce the risk of nuclear proliferation.

We have done that in other cases where we provide assistance to other governments that move in the right direction. It is a normal diplomatic activity.

In this case, I tried to make the point very clearly that the large item that is properly focused upon by analysts of this agreement, namely the \$4 billion light water reactor project, is not a reward for compliance with their NPT or safeguards obligations. It is in replacement of a gas graphite technology, a whole reactor system that would have produced hundreds of kilograms of separated plutonium which the North Koreans are not obligated to give up under their NPT or safeguards obligations.

This is something that we wish to achieve because it is of real concern to our security and that of Japan and South Korea. We have made a significant stride in reducing the risk of proliferation, the spread of that material around the world, by getting an agreement in which the North Koreans do not build or complete that reactor system.

In exchange, there is a light water reactor system which is much more proliferation resistance, which we can talk about in some detail, if you wish.

There is, I understood, a desire for some clarity in the dates by which things happen.

Mr. Chairman, as you read not only the public text but the Confidential Minute, you will note that the activities that occur that the North Koreans take which are most significant in the future, since the freeze is in place now, there are three other activities that are quite significant. One is the special inspections of radioactive waste sites. A second is the shipment of the spent fuel out of their country, the 30 kilograms. A third is the dismantlement of their nuclear program.

Now all three of these activities are specific, specific in being timed to the delivery schedule of the light water reactor project. We cannot put dates in because we do not want, for commercial, good

commercial reasons, to tie light water reactor construction to particular dates. We may not be able to meet those dates.

So, instead, we have tied their performance to the light water reactor project. That is what they get out of this.

What we get out of this is the shipment of the spent fuel out of their country, the full-scope safeguards compliance as the North Koreans accept whatever measures, including special inspections, the agency may require, and, third, the complete and utter dismantlement of their old nuclear program. That is all phased with the light water reactor project. It is quite specific, but not in time because the timing would have forced us to put specific dates on the light water reactor project which, commercially, we do not believe we can do.

If I can now turn to some of Senator Murkowski's questions, and I hope I am picking up some of Senator Pell's concerns as I move along, the first question I understood, Senator Murkowski, was why not a treaty, why not a binding agreement, why not something that should have been submitted to Congress if, indeed, this should not have been submitted to Congress.

I am not surprised that you did not find "agreed framework" in the book you had. I'm not a lawyer, either, nor even a banker. But the reason for this particular structure, Senator, is because we did not want a treaty. We did not want—and I will not even, when I am speaking precisely, call this an agreement; I'll call it an "Agreed Framework"—that because we did not want to take on the obligation of providing a light water reactor or two light water reactors, to be precise.

What we wanted to do was have a political agreement—a political agreement—in which we took steps and they took steps. Most particularly, we wanted to make sure that these two steps matched up. But we did not and could not commit ourselves in a legal way to provide what we are using as a rough round number, \$4 billion, of light water reactors. As the President's letter makes clear—there are a couple of points that are very important in the President's letter. The first is that we fully intend to form a consortium that will provide these reactors.

Now the President did not provide that letter to the North Koreans without doing a lot of consulting. It gives him very good reason to believe those reactors can be financed and technically constructed as a politically and in every other way viable international undertaking, which I can speak to in the future, if you would like. This is a preliminary assessment on which he bases the assurance in that letter.

He also says something which he should say, which is if, for some reason, the consortium could not be formed, the United States would take on this burden, subject, of course, to the approval of Congress. That is a political commitment the President has made.

Senator MURKOWSKI. Is that in the letter?

Ambassador GALLUCCI. That is in the letter, sir.

Senator ROBB. That's in the letter.

Ambassador GALLUCCI. The phrase is "subject to the approval of the U.S. Congress."

So I understand why you, on the one hand, would like to bind them to the things that you wish them to do with a treaty. But, quite frankly, as I said, we would not have been able to bind ourselves legally to the delivery of that \$4 billion project. We believe we have the basis for a political commitment. So that is why it is not a treaty.

Under the circumstances, I would say, therefore, as to why not submit it to Congress, I am advised by counsel that we did undertake the appropriate consultations, and I tried very hard, personally, to stay in close touch with Members of the Congress and particularly of this committee about what we were doing as we moved along.

Senator MURKOWSKI. But you started out to tell us why you were either going or not going to come to Congress with it and you did not really address that. You simply said in the President's letter it would be for the \$4 billion light water reactor. That was the reference of coming to Congress.

But I am curious to know why you didn't come to Congress with the proposed bilateral agreement, which is what it is. And, obviously, as a consequence of your testimony, it is not a binding agreement on either side.

Ambassador GALLUCCI. Senator, the best I can do in answer to that is, given the character of the document, as an "Agreed Framework"—and it is not an agreement, or I think it is an agreement in laymen's words; I am told it is not an agreement in lawyer's terms; but in my terms I would normally call it an agreement, but it is not a legal agreement—my understanding is that we consulted properly with the U.S. Congress and, as I said, particularly with this committee in advance. But it was not a document that required submission to the Congress for approval.

I am afraid that is the best I can do on that point.

Senator MURKOWSKI. Well, I guess one is entitled to his own interpretation relative to the binding consequences of the document. We seem to have put together a reference, if you want to call it another term, not based on trust, as you have testified, and we are proceeding with it and we are prepared to make certain commitments. Our President is prepared to use his office to fulfill those commitments. That is pretty significant when you read it.

Ambassador GALLUCCI. Yes, sir.

Senator MURKOWSKI. But I don't see anything from the North Koreans of that stature or nature.

Now maybe you have a letter from the President of North Korea that we don't know about.

Ambassador GALLUCCI. Senator, we did not seek a letter from the North Koreans and there are a lot of reasons for that I guess some of which I would not lay out right at this moment. But there is one which is, I think, adequate, at least from our perspective, and this is that we wished the conditions for the assurances the President was offering to be specific and not in any way hedged, and they would be specific and related to the North Korean performance under the Agreed Framework.

If you will look at the President's letter, Senator, it says that "I will follow this course of action so long as the D.P.R.K. continues to implement the policies described in the Agreed Framework be-

tween the United States of America and the Democratic People's Republic of Korea."

So we did not wish an interpretation other than that to bear upon the obligations or assurances, the political assurances, that the President was making. We did not seek any letter, comparable letter, because the situation is not comparable between the United States and the D.P.R.K.

We set out the terms under which these assurances would be operative and they were the compliance by the North Koreans with the Agreed Framework. If they do not comply with the Agreed Framework, the assurances are not operative. We don't need more than that. That's a unilateral statement on our part.

Senator ROBB. But, Mr. Ambassador, let me just interject here. I was going to wait until you had responded to each of the questions and our detailed questions could follow up on any of the points. But I don't want to lose this point here.

In effect, the President of the United States, while not an agreement or a formal binding contract, as such, has put the full weight of the United States behind performance on its end of the bargain. It seems to me that you are making a very fine lawyerly point, if you will, on the difference between a formal agreement, where two parties have signed something that is enforceable as such, as an agreement which somehow has a slightly different character but the United States has said we are basically going to stand behind any of the failure of performance of other parties to make sure that, as long as you perform, we'll make sure that we do everything that we can.

It is a fairly nice distinction, but I'm not sure that it answers the point that Senator Murkowski has raised.

Senator MURKOWSKI. If I could just followup very briefly, I totally agree with your analysis, Senator Robb, relative to the President putting the full faith and credit of his office behind our part of the bargain for performance. And one can conclude that that is a commitment subject to, as you pointed out in the bottom of the text of the letter, as long as the North Koreans continue to implement the policy. But, clearly, there is a time sequence there. We have to perform up front with the oil and the light water reactor. We don't get to look at their waste sites until we fulfill these pledges. I am also curious to know—and I don't want to get into the questions yet, either—what kind of documentation do you have? Do you have a binding contractual commitment with Japan, South Korea, and the other countries as to what they are going to do? Or is this something that is going to come later?

Ambassador GALLUCCI. There are three points I would like to make, if I can remember all three.

The first is, Senator Robb, I was not trying for a fine legal point. I am not capable of that. What I was really trying to make was a fairly broad distinction between the kind of commitment, serious, important commitment by the President of the United States, to the head of state of another government to use the powers of his office and to make best efforts to have this Agreed Framework, our part of this Agreed Framework, honored. I am not trying to move away from that. That is what that is.

But this is still quite different than a treaty or a legally binding commitment in which, were he not able to do this, either because the consortium could not be formed or because, if it could not be formed, Congress would not appropriate the money to have the United States complete this, there is not a recourse under an Agreed Framework for the other side. We are not committing the United States to do this in a legal way, in a way that is ultimately open to litigation. That is not what we are aiming at.

I cannot go on that point beyond this concept.

Senator ROBB. Let me inquire though, if I may—and, again, I apologize in that I was going to get into this in later questioning. There are eight specific points in the Confidential Minute. Because this is an open session, I would describe the points.

Ambassador GALLUCCI. I appreciate that.

Senator ROBB. But there are eight specific points and they are all focused on U.S. performance, not on North Korean performance.

Why are those included in the Confidential Minute, as opposed to part of the open agreement? It seems to me that you are making the case that you're not a lawyer and this is not binding, and what have you, and yet there seem to be some very specific items that we are required to do, but not a corresponding requirement on the part of the North Koreans.

Ambassador GALLUCCI. Senator, I cannot go into the Confidential Minute either. But there are actually, as you know, ten paragraphs. Paragraph seven has eight points. That happens to be the paragraph in which we talk about the delivery schedule of the light water reactor. But the reason there is a Confidential Minute is because of what is in all the other points. And, as you know, Senator, these are things that the North Koreans are obligated to do, and it is a very heavy emphasis on their performance.

So the Minute is, I would say, not only balanced, but probably substantially balanced in our favor in this connection.

I really cannot go further on the point of the legality and the distinction between these two.

Senator ROBB. All right. Mr. Ambassador, if you would, why don't you address each of the other questions that you noted during the course of the opening statements, and then we will follow up with some specifics.

Ambassador GALLUCCI. All right.

There was a question Senator Murkowski asked about the funding requirements. I do want to speak to that.

The United States is committed to provide the first tranche, if I can put it that way, of heavy oil, which is valued at about \$5 to \$6 million, and I understand the Defense Department is prepared to do this and will do this within, as the agreement requires, the first three months or before January 21, and I understand can do it under existing authorities.

Senator MURKOWSKI. Where does it come from and is there going to be cargo preference? Are we going to put it in U.S. flag vessels with U.S. crews to deliver it?

Ambassador GALLUCCI. I am going to have to take that question for the record, Senator, about the actual modalities. I would be pleased to provide that.

Senator MURKOWSKI. I would appreciate it if you take it for the record.

[The information referred to follows:]

Fifty thousand metric tons of heavy fuel oil was solicited on November 23, 1994. On December 2, a contract for the full quantity was awarded to Honam Oil Refinery Co., Ltd., a refiner with a facility located at Yochoon, Republic of Korea. Honam was the low price bidder on the requirement. Transportation of the heavy fuel oil is being arranged by the Military Sealift Command, but no ships will be chartered until receipt from the DPRK of discharge port data, and resolution of other outstanding issues between the U.S. Government and the DPRK. Transportation will be arranged in accordance with the applicable cargo preference laws, principally the Cargo Preference Act of 1954 (alternatively identified as the Cargo Preference Act of 1936, as amended in 1954.) The potential use of U.S. flag carriers for deliveries to the DPRK is restricted by applicable regulations of the Department of Commerce and Transportation (see 44 CFR 403.)

Senator MURKOWSKI. You don't know where it comes from, either?

Ambassador GALLUCCI. I don't know right at this moment.

That is a commitment of the United States, for that \$5 to \$6 million.

Second, Senator, we are working very hard to reach agreement with the North Koreans to have the spent fuel that is in the pond now put in a condition so that it can be preserved for shipment out of the country. As I said to you in the opening statement, the Department of Energy's experts from the laboratories were at Yongbyon and looked at it. They know some things that need to happen. They need to have the water clarified. They need to have the fuel put into containers so that it ultimately can be shipped. And they ultimately want to have this fuel safely stored for what could be 5 or 6 years.

I understand the Department of Energy believes that this activity, the water clarification, which they estimate will cost a couple of hundred thousand dollars, is something they can do before the end of this year and really ought to for safety reasons.

I believe they expect, the Department of Energy, that is, to undertake the other activities, the recontainment or recanning of the fuel. That could take some millions of dollars, less than \$10 million, maybe more than \$5 million—in that range. This would involve a reprogramming and they would follow the normal practice of coming to the Congress for confirmation of reprogramming authority. This would happen after January 1.

Now those are the financial expectations we have at the moment under this agreement. I would not want, however, to suggest that it would not be wise or prudent and that we would not be coming to the Congress in the future for funding to be part of the consortium that will fund the heavy oil, that will be part of that consortium or even for some funding under the light water reactor project.

In the end, though, Senators, we are talking about tens of millions of dollars. We expect the \$4 billion burden to be borne centrally by South Korea, and this we understand. We believe, also, that Japan and others will play a role in that.

The United States' financial role, as best we can estimate it at this point, we would anticipate would be in the tens of millions of dollars.

About Japan and South Korea, Senator, a question you asked earlier was on what basis we had received these assurances. In open testimony, I can tell you that we did receive assurances from South Korea and Japan, and in another setting I could provide more detail on that. This is out of respect for the diplomatic connections that we have with both South Korea and Japan. But the assurances we judged substantial and adequate to support the political assurance that the United States President was making to the D.P.R.K.

A question that you asked, Senator Murkowski, is where is this technology coming from and is any of it U.S. technology.

The current expectation is—and I have to put it that way, although there is lots more behind it—the current expectation is that South Korea will play a central role in constructing the reactor. They will construct reactors in North Korea of the kind that are being built currently in South Korea, known as the Ulchin 3 and 4 reactors. These are reactors that are in a major way South Korean constructed but with some significant components coming from an American reactor vendor that in earlier models had provided larger portions of earlier reactors.

So the short answer to the question is South Korea is quite capable, with the participation of others, including a United States vendor or vendors to construct these reactors. As you know from the agreement, if there is to be a United States role, and we anticipate there will be one, it will be necessary to negotiate an agreement for cooperation with North Korea. Such an agreement will have to be submitted to the Senate for approval. And so yes, there would be a U.S. role and yes, the United States Senate would have an opportunity to review it.

Senator, you asked what would happen in 5, 6, or 7 years if the North Koreans renege. Where would we be under this Agreed Framework?

I would say we would be substantially better off than without the Agreed Framework, and I think that is the relevant comparison. In 5, 6, or 7 years, we would have had that amount of time in which, if we stayed on course, spent fuel in the pond would probably have been shipped out of the country. In 6 or 7 years, if we had stayed on course, we would have had special inspections.

But let's assume for purposes of your question that we did not get special inspections yet, that it was at that point that they reneged or walked away. Let's assume it was at the point when the fuel was to be shipped that they decided they did not want to do that.

If this is 5 or 6 years from now, there would have been no reprocessing, no additional accumulation of plutonium in North Korea. The material would still be in the pond. It means there would be no additional production of plutonium because the 5 megawatt reactor would have been frozen. It would mean that the 50 megawatt reactor and the 200 megawatt reactor, instead of spewing out almost 200 kilograms of plutonium a year, would have been mothballed for 6 or 7 years.

It seems to me that, by whatever measure we use, we are much better off 5 or 6 years from now if they walk away from the agree-

ment than if we did not have the agreement, which, again, is the relevant comparison.

Certainly, what they would get is not insignificant in terms of beginning the construction of a light water reactor. But they certainly would not have the nuclear components of a nuclear reactor, and, even if they did, North Korea has no, repeat no, indigenous capability to complete 1,000 megawatt light water reactors. So, even if they had nuclear components and they walked away after that, but before there was dismantlement of the program, there is no significant benefit to them until the light water reactor comes on line. By that point, they have to be in full compliance with Nonproliferation Treaty safeguards, including the special inspections, the spent fuel has to be shipped out of the country, dismantlement has to begin. There is very little that the North Koreans would benefit from at all, except, perhaps, some shipments of heavy oil which, as you know, is useable only for heating.

Senator MURKOWSKI. Ambassador, I agree with that analysis. But I do not agree that that was the only alternative because what has happened is the North Koreans have simply used as leverage the prohibition by the IAEA to come in to the two waste sites, and we have negotiated as a consequence of that premise being nonnegotiable, if you will. The theory is that they have said, in effect, we are not going to let you into these two sites. Therefore, if we are going to put some kind of understanding together, that understanding is going to be based on U.S. performance, not multilateral performance, and that is the way the negotiations have basically come out.

So I think it depends on which way you look at the apple or the orange here. You are defending a position that would not exist if we had had mandatory inspections, because then one has to ask the obvious question: what is North Korea hiding?

Ambassador GALLUCCI. Senator, I think it is time we addressed that question.

Senator MURKOWSKI. Fine.

Ambassador GALLUCCI. I would very much like to do so because the question of special inspections has been plaguing us, I would say for some time.

First, if I could be permitted some brief history here of what special inspections are about—

Senator MURKOWSKI. I would urge you to continue your responding to the questions.

Ambassador GALLUCCI. This actually, Senator, picks up on what was going to be the next answer, anyway.

Senator MURKOWSKI. Fine.

Senator ROBB. I think this is important. Would you include, however, any reference to previous testimony you have given this subcommittee about the importance of the special inspections because it has been on our agenda every time that we have discussed this.

Ambassador GALLUCCI. Yes. Absolutely.

First, the way this issue was, if I can put it this way, given to this administration—I think, as everybody know, this issue has been before us for more than a decade. We have watched the North Korean nuclear program build, build up. First it was a small Russian program, not of proliferation concern. But their indigenous



program we have watched since the early 1980's, at least. And we have been concerned about it for that long. Previous administrations have pushed them to the treaty, ultimately to accept IAEA safeguards.

This administration received this issue when the North Koreans refused to accept inspections that the IAEA wanted to conduct at two radioactive waste sites, suspected radioactive waste sites. We are pretty confident they are radioactive waste sites.

The reason the IAEA wanted to go to those sites was because they had conducted an inspection in which their analysis of the samples could not be reconciled with the declaration the North Koreans made about how much plutonium they separated between the years 1989 and 1991.

It seemed that the gram quantities that the North Koreans declared could be off by an order of magnitude. It could be maybe 7 or 8 kilograms of plutonium, rather than less than 100 kilograms of plutonium based upon the same analysis. The sample analysis did not tell quantity, but it suggested that there was more plutonium than the North Koreans declared.

The radioactive waste sites are relevant because it is possible, by taking samples from those sites, for the IAEA to learn more about how much reprocessing was undertaken. It is our own assessment—not that of the IAEA, but the U.S. Government's assessment—that the maximum amount of material they could have is less than 10 kilograms. But the agency, the IAEA, believes there may be more than the gram quantities that the North Koreans declared.

So we wanted this cleared up, certainly for the question of whether they had these kilogram quantities of plutonium, but also because it was a matter of IAEA safeguards integrity and the integrity of the Nonproliferation Treaty.

The North Koreans refused to accept the inspections. The IAEA properly reported it to the Security Council. The Security Council, first through a presidential resolution then through a Security Council resolution, asked the North Koreans to comply. And they also called upon individual governments to negotiate a resolution to the issue, if possible.

Those special inspections will certainly, we think, shed light on how much plutonium there may be in North Korea. It has been a tenet of our negotiating position from the beginning that we would not consider the nuclear issue settled. We would not consider the nuclear issue settled, until the IAEA was satisfied, until they could say the North Koreans were in full compliance with their safeguards obligation and, thus, the treaty.

I have testified to that. Under Secretary Davis has testified to that, and I am sure that every administration official speaking to that issue has said that full resolution requires that the IAEA be satisfied.

The Agreed Framework says that the IAEA must be satisfied. That is the standard. The actual language is "all measures deemed necessary by the IAEA to resolve, including special inspections." It is what the Agreed Framework provides.

The question of timing comes to a matter of negotiation. I note, Senator, that you said that we compromised when we negotiated the Agreed Framework.

Senator MURKOWSKI. I implied you lost your leverage. Go ahead.

Ambassador GALLUCCI. I am going to have to tell you, Senator, that having negotiated that over a period of 16 months, I have to confess to having compromised. But I don't believe I compromised any principle of any importance. I don't believe I compromised any principle. I don't believe that I compromised on anything of substantive significance to our security or that of our allies.

Senator ROBB. Where on that scale would you place the integrity of the IAEA process?

Ambassador GALLUCCI. I would place the integrity very, very high. What I think we did is we, the United States, just substantiated the integrity of the IAEA. I know you have talked with Director General Blix. I have talked to him throughout this at length. Director General Blix well understands that what the United States did, representing in a sense the United Nations and the Security Council on this, is refused to walk away from the safeguards issue.

We had very important, and I would say in security terms more important, objectives of making sure that plutonium was not reprocessed that was in the spent fuel, making sure that more was not accumulated, making sure that North Korea did not get a strategic nuclear capability, all of which, as Director General Blix well knows and has said, go beyond what the IAEA and the NPT can prevent, because the accumulation of huge stockpiles of plutonium by North Korea is not prohibited by the safeguards agreement. It is not prohibited by the Nonproliferation Treaty.

He knew and understood that we needed to get at these objectives and that we did.

We also refused to walk away from the IAEA concern, a concern we share, that the North Koreans ultimately comply with the safeguards agreement, ultimately accept the special inspections or whatever else the agency deems necessarily, ultimately come clear.

And, by the way, Senator, if it turns out as a result of those special inspections that North Korea has more material than it has declared, North Korea will not be in compliance until it presents that material, whether it be 2 kilograms, or 6 kilograms, or 8 kilograms, and subjects it to IAEA safeguards.

That is what compliance with full scope safeguards means. We do not walk away from nuclear weapons, we do not walk away from undeclared nuclear material.

The nuclear reactor deal does not go through. No significant components of the nuclear reactor deal are delivered until there is full compliance. That is what the Agreed Framework provides for.

Senator MURKOWSKI. I don't want to get into a debate, but the other side of the issue is clearly that the potential threat of whatever is in the nuclear waste sites will be there, uninspected, under sole North Korean control until such time as those inspections take place.

I would suggest to you that that, indeed, poses a national security threat to the region and the area during the interim time between now and when we get our inspectors into that area because

we have not addressed, nor should we, relative to what may be there. That is the point that I think separates, if you will, to some extent, how you look at the issue and the negotiation and, ultimately, the compromise. This is because for the administration to take the position that they have removed the threat does not address what is in specifically those waste sites. That threat will continue until we get in there.

Ambassador GALLUCCI. Senator, I assure you I don't want to get into a debate, either. But I do want to continue the discussion on that point because it is an important one.

What is in the radioactive waste sites is not a threat. It is radioactive waste. It may be hazardous to our health, but that is not where the 6 or 8 kilograms of plutonium is. As a matter of fact, if the North Koreans do have more plutonium, if they have more plutonium than they declared and it is significant from a nuclear weapons manufacturing perspective, it is someplace else.

Senator MURKOWSKI. All right. So it's someplace else.

Ambassador GALLUCCI. It is true that we do—

Senator MURKOWSKI. It's someplace else that we can't inspect.

Ambassador GALLUCCI. We don't know where it is.

Senator MURKOWSKI. And they are not showing us.

Ambassador GALLUCCI. And they are not showing us. That's true.

Senator MURKOWSKI. And our inspectors are not going there. So I have made my point.

Ambassador GALLUCCI. IAEA is not being permitted to take the samples at the radioactive waste sites which would help the agency understand whether there is more plutonium than declared. That is true. And, as I said in my statement, it would have been more desirable had the agreement, the Agreed Framework, provided for their compliance with that part of their safeguards obligations sooner.

I am prepared to stipulate that. I am prepared to say that on that point of timing of implementation, yes, indeed, we compromise over what would have been a more desirable outcome in which that inspection would have taken place sooner.

What I am arguing to you, though, Senator, is that it is at no security disadvantage to us. If that material, if that plutonium is in North Korean hands, it has been there for 4 or 5 years and it can be there for another 4 or 5 years without increasing the risk to us—if it is there. The radioactive waste site, which will tell us, perhaps, whether it is, is not going anywhere. The isotopes have half lives in thousands of years. So we can do that inspection in the future.

Senator ROBB. But with regard to the integrity question, it was the timing that I was referring to. In other words, we were making an issue of the fact that under the terms of the safeguard agreement, we were required to be permitted or the IAEA was required to be permitted access to the special sites or for special inspections, and we have, in effect, said as long as it is not violated in fact, we will stretch out the timing for whatever period of time this agreement takes to come to fruition.

Ambassador GALLUCCI. Mr. Chairman, that's right. There is no question that we would like that to have been sooner. The only point we continue to make, and we ought to make, and that people

should understand, is that the agreement does provide that, before they get anything of significance, they have to come clean. And, in the meantime, we are much better served by an agreement that stops the rest of their program.

Senator ROBB. Please continue on other questions you want to address.

Ambassador GALLUCCI. Thank you, Senator.

There was, it seemed to me, in some of what Senator Murkowski said, a suggestion that the IAEA was not conducting inspections. I want to make clear that IAEA has been in continuous presence at Yongbyon. It had some very successful discussions with the North Koreans about expanding the inspection, and it is fully capable of monitoring all the elements of the freeze on every element of their program, and the IAEA is active throughout the program. The areas where it cannot go are the two radioactive waste sites. It cannot get at the historical question until we get further down the road in the implementation process.

Senator Murkowski I believe also said that there was no rollback in the North Korean program. I suppose it is fair to say there isn't immediately. There is a freeze in the North Korean program, but the Agreed Framework provides for a very extensive rollback of their program—everything from the shipment of the spent fuel out of the country to complete dismantlement of all nuclear, gas graphite nuclear facilities.

It was noted that the Agreed Framework doesn't say anything about exports. It does not say anything about exports because there should be no nuclear material for North Korea to export. The whole point of this agreement was to assure North Korea's neighbors and the rest of the international community that there was going to be no separated plutonium in North Korea. That is what the agreement provides. So explicit reference to export would not have been appropriate.

Senator Murkowski, you noted that the time scales of a liaison office and other political relations differ from, say, the North Korean case and the Vietnam case. I guess that is hard for me to comment on at the moment in the sense that I don't know what the timeframe is going to be exactly for the North Korean case.

Senator MURKOWSKI. Well, something happens in 3 months because you said so.

Ambassador GALLUCCI. I am going to say that we are going to make our efforts to move consistent with the Agreed Framework, to honor the agreed framework, and if we can resolve the consular and other issues that have to be resolved before we can open a liaison office, we will.

I would say that, rather than comparing North Korea to Vietnam, the situations are different; that I don't know that you would want our foreign policy—

Senator MURKOWSKI. Could you give me a close comparison?

Ambassador GALLUCCI. I believe a close comparison would be inappropriate. I believe that we are dealing with a situation in North Korea that is entirely different than the one in Vietnam, and I would think you would want our foreign policy to take account of that.

Senator MURKOWSKI. I would. I would like to see it speeded up in Vietnam because they have shown cooperation and we are so far behind. You know, we haven't done anything.

Ambassador GALLUCCI. I will note that, Senator.

Senator MURKOWSKI. Thank you. That is why I brought it up.

Ambassador GALLUCCI. I cannot speak to the Vietnam case, but I am prepared to speak to the Korean case.

You also noted, Senator, that we did not provide in the agreement for other concerns we had. You particularly pointed to and showed a chart that had unaccounted for U.S. servicemen from the past wars.

Senator, that issue is of great concern to this administration, as it has been to past administrations. The best way of answering that point I think is to say that we have a number of other concerns about North Korean behavior. Unaccounted U.S. servicemen is high on the list. So is a ballistic missile development program with very extended range, which threatens directly North Korea's neighbors, Japan and others. So is their export capability and export activity, particularly to the Middle East. So, also, Senator, is the deployment of their over million man army, 60 percent of it forward, and their huge artillery deployments on the DMZ. Their conventional force deployment is extremely provocative. I could go on to human rights and other issues.

What I can say to you, Senator, is that our best way of dealing with those issues is through the broad and thorough approach, a phrase that we agreed upon with the South Koreans, to a political settlement with the North Koreans that allows, that gives us a vehicle to deal with those issues. Without that, I think we would not have leverage. This agreement gives us leverage.

Senator MURKOWSKI. I totally agree with you. However, I think there is justification for multilateral, as opposed to unilateral work. That is where we depart.

Ambassador GALLUCCI. That is the next point, Senator.

I noted that you believe that these discussions should have been multilateral. I guess I can make two points in that connection. One is that we consulted as closely as two nations can consult with the South Koreans and the Japanese, particularly. We stayed in touch with others of our allies, but particularly because their security was so intimately affected by this agreement with Seoul and with Tokyo. We believe both governments are very comfortable with where we are at this point.

There is, naturally, in both South Korea and Japan concern about the agreements as there is concern here. But I think in the case of both governments, we are, all three, together on this agreement.

Politically, the United States negotiating the agreement bilaterally was the mode that was feasible—politically. The Security Council, as an entity, could not have conducted these negotiations. The United States, in making the assurances, the President making the assurances that he did, did it only after the consultation.

So I believe that, both in the negotiation of the agreement and in the envisioned implementation, we are very multilateral. The method by which this agreement will be implemented will be a multilateral consortium. Certainly, we have had already consulta-

tions in Washington in the last 3 weeks with the Japanese and Koreans. We will have more in the next 2 weeks on the formation of the consortium. We expect to be putting a consortium together of 10 or 12 countries, at least, to implement the agreement, both on the heavy oil and the light water reactor side.

So I think, Senator, if you will be patient with us, you will see that this will be very much of a multilateral undertaking. That is our intention.

I would like to make a point or two to Senator Gregg's questions, if I could.

There was a question about why the oil, why the light water reactors, why are we doing this, and are we really getting the performance on the nuclear issue that we say we are.

I believe the Senator said that if we were, then it would be worth the price. It would be worth an international consortium building a \$4 billion reactor project and supplying perhaps \$50 or \$60 million worth of heavy oil a year. But he doubted, I believe, that we got that performance.

I don't know how beyond what I have said so far to convince the Senator that, if honored—if honored—the agreement would fully meet our nuclear concerns, our concerns about the nuclear program in North Korea—if honored. And if at any point it is not honored, we are better off for having had the agreement than having not had the agreement.

Senator Gregg mentioned his concern about space launch vehicles. I assume principally that is a concern about a ballistic missile capability. As I said, the language in the Agreed Framework that refers to improved relations with the United States is linked to going to the ambassadorial level, is linked to satisfying other concerns we have. High on that list is the ballistic missile program of North Korea.

The Senator I think concluded by saying that he thought North Korea wanted money from this agreement and wanted to keep its nuclear weapons and its nuclear program. And he thought that perhaps it succeeded in getting both.

It is our view, Senators, that North Korea succeeded in getting neither, if that is what it wanted. It is not getting money. There is not going to be fungible cash going to North Korea. There is going to be heavy oil, which has very limited application, and no application to fueling their military capability. It is going to get a light water reactor project. It is not transferable.

It will help—it will help—in the economic development over the next 10 or 12 years of North Korea. If we have the future we want in Northeast Asia, that will not be a bad thing.

In terms of its nuclear weapons program, if implemented, I say again there will be no nuclear threat from the North Koreans if we can get this Agreed Framework implemented.

I believe that is all I have in the way of answers to questions so far, Senators.

Senator ROBB. Thank you, Ambassador Gallucci. We will begin with 10 minute rounds of questions on this point and will follow up on some of the things you have already alluded to.

You just used the word "comfortable" in describing the situation that exists vis-a-vis South Korea and Japan. It is my understand-

ing that the principal support, and I'm going to use "support" instead of "funding" for just a moment, would come from South Korea, and Japan would be the second principal in terms of the amount of support they are expected under the agreement to provide.

But I also recall reading in the last few days a statement attributed to Foreign Minister Han that suggested that the South Koreans, at least, were not prepared to provide any dollar support for the venture whatever, that it would be solely material support.

I wonder if you would comment on the basic understanding of what the South Koreans have agreed to do and how much of the nonperformance on the part of South Korea or Japan the U.S. is obliged to pick up under the terms of their own agreement or the President's guarantee.

Ambassador GALLUCCI. Mr. Chairman, I will answer that in general terms. Then, if we need to, I would like an opportunity in closed session to go into more detail about a diplomatic exchange. But, in general terms, it is fair to say that a South Korean strong preference is, to the maximum extent possible, to provide its support in kind. And that is entirely appropriate. Obviously, the burden of the items to be provided to North Korea are the two 1,000 megawatt reactors, and these will be largely built by South Korean firms that are quite capable of doing that.

Senator ROBB. But will they be paid for by South Korea?

Ambassador GALLUCCI. Yes, sir.

Senator ROBB. In other words, is there some real question of whether or not these are, in effect, loans, to the extent we are talking about dollars, or furnishing equipment, or whether or not it is going to be a provision of these particular elements of this overall light water processing capability in the two facilities that would be an in-kind contribution?

Ambassador GALLUCCI. Well, the South Koreans have said that they will play a central role in financing and building the reactors. So my first point was that they will finance their building of the reactor. So their contribution will be essentially largely to construct these reactors and pay for that construction. This will not require the transfer of hard currency outside of South Korean borders to do that.

This will not entirely cover construction of the reactors. So we do need to form a consortium. We do need the involvement of Japan and others to complete the light water reactor project. But South Korea is going to bear a central burden and they have agreed to do that.

I should say a word about a loan, since you mentioned it. We have understood the North Koreans to wish to do this as a loan—the North Koreans. This is to say they have talked about a long term, no interest loan which they would ultimately pay back by barter.

We have yet to enter contract negotiations. We have a team right now, today, in Beijing talking to them about light water reactors. They are not negotiating. The negotiation will be undertaken by KEDO, this international consortium. We will find out what exact terms we are talking about only down the road.

But in terms of the funding responsibility, South Korea is in a central role and they have taken that on and accepted it. We are looking to supplement both the construction, their role in constructing the light water reactor project and the supply of the heavy oil through the international consortium.

Senator ROBB. Let me explore a more basic question that we have discussed in some of our previous meetings. It was originally in the context of a possible alternative to the gas graphite reactors that the North Koreans had in production in terms of the 5 megawatt and were building in terms of the 50 and 200 megawatt reactors and the prospect of substitution of the light water reactors and technology.

Would you discuss for just a minute the difference between the end product in terms of the kinds of plutonium, weapons-grade or others, and the amount and the difficulty of taking the end product and reprocessing it from the light water reaction capacity with 2,000 megawatts of capacity once this is entirely in place in terms of how much potential for nonpeaceful uses exists in the substitution of light water for graphite technology?

Ambassador GALLUCCI. Certainly, Senator.

I think most analysts who heard the North Korean initial proposal in June of 1993 to give up their gas graphite fuel cycle entirely if they could be provided with light water reactor technology were very skeptical—very skeptical. The reason is because most people would understand and accept that a light water reactor technology is much more proliferation resistant, and it is so for a number of reasons. I use the word “resistant” somewhat the way it occurs to me watchmakers talk about water resistant. They don’t talk about waterproof.

This is because, in the end, any nuclear reactor that has Uranium 238 as a fissile material is going to produce plutonium. And if you were to ask me would I have preferred these be coal fired plants from a proliferation perspective—

Senator ROBB. Which was going to be my next question, so you might incorporate that into the answer.

Ambassador GALLUCCI. It is easy to do, Senator. It is easy to do in terms of incorporating it. The answer is an inevitable one. The North Korean willingness to engage in this deal turned upon them getting the latest technology or a modern technology, a light water reactor technology, and that it be a nuclear technology.

Senator ROBB. Putting aside the political question that is involved—and I did not mean to cut you off in terms of the comparison because I would like to get to that—

Ambassador GALLUCCI. I will go back to it.

Senator ROBB [continuing]. But putting aside the political question, is there any reason in terms of the actual capacity to meet their domestic needs for power that would have required that they use the light water technology as opposed to coal fired technology?

Ambassador GALLUCCI. Senator, none that I am aware of. Moreover, I would not sit before you and try to argue to you that a development economist would find the most efficient technology for providing energy for economic growth in North Korea to be two 1,000 megawatt light water reactors.



Senator ROBB. Would you speculate as to their rationale for insisting on the light water reactor as a substitute instead of coal fired technology or others?

Ambassador GALLUCCI. Senator, I have been doing nonproliferation for the U.S. Government on and off for 20 years and I have been amazed—well, I have stopped being amazed—by the enthusiasm of countries with developing economies for nuclear energy as an element in meeting their electrical energy needs.

It is not that it should not be part of the mix, necessarily. It has seemed to be chosen far out of proportion—and I will speak personally now—to what seemed appropriate for many countries. I believe that had something to do with the advanced nature of the technology and its sophistication and less sometimes on its pure economic rationality.

But I do want to get to the basic question, which is why is this proliferation resistant. There are several reasons for that.

Perhaps chief among these is that the gas graphite technology, with which we were comparing the light water technology, involves the irradiation of fuel in reactors, fuel that is clad in a way that makes storage for a long period of time technically very difficult and unsafe in water. The cladding simply deteriorates.

Other countries that have gas graphite reactors, France and Britain, for example, would reprocess that fuel promptly in less than 2 years and separate the plutonium. This is what the North Koreans fully planned to do. They not only had a reprocessing plant, they had expanded it. They had already done some reprocessing that led to whatever plutonium they now have. And so, they are on a road with a technology that would have, by its nature, integral to it, meant the continuing separation of plutonium.

Light water reactor technology, light water reactors are fueled by fuel that is contained in zirconium cladding, and that fuel sits safely in storage ponds for decades. Indeed, the light water reactors around the world, in the United States and everywhere else in the world, that fuel, the vast majority of it, well over 90 percent, perhaps over 95 or 98 percent of that fuel is still in storage ponds. It does not require reprocessing. It is not economically desirable to reprocess it.

So the first point to make is the light water reactor does not have separation of plutonium as an integral element to it, and the gas graphite reactor does.

The second point to make is that light water reactors require enriched uranium. "Enrichment" means to increase the content of the fuel in the isotope Uranium 235 to greater than it appears in nature. So that enrichment requires an enrichment facility.

This means that anybody who has a light water reactor is dependent upon enriched uranium. North Korea undertakes not to build an enrichment facility. It has no enrichment facility, no enrichment capability, no access to that technology.

Senator ROBB. Is there anything that precludes them under the agreement from building or acquiring that technology?

Ambassador GALLUCCI. The agreement connects to their compliance with the North-South Declaration on Denuclearization, which precludes any reprocessing or enrichment capability in their country.

Senator ROBB. Which, of course, is not yet operative from their point of view.

Ambassador GALLUCCI. But we believe they must comply with it.

So, as far as compliance goes, if there were ever any move to enrichment, we would argue they were not in compliance with the Agreed Framework.

Senator ROBB. My time on this round has expired. But the ultimate question, though, was with respect to the availability of end product, putting aside the question of stability and a requirement that some process take place that leads inevitably to the kind of enriched or reprocessed weapons grade plutonium that you don't want to have as readily available. Is there any reason, short of the question of stability, that they could not get a comparable amount ultimately of weapons grade or other suitable plutonium from the light water reactor that is vastly different in quality from what is available through the gas graphite technology?

Ambassador GALLUCCI. Beyond the point I was just making, Senator, that they would be dependent upon fuel supply and, therefore, if they did something they could be cutoff and their reactors would shut down, there is the character of the plutonium that results from normal operation of a light water reactor vice the character of plutonium that results from the normal operation of a gas graphite reactor.

Plutonium in the first instance, from a light water reactor, stays in, burns up longer, and, therefore, has an isotopic content and a buildup of radio nucleides which makes handling more difficult and makes the design of a nuclear weapon more difficult. It is not waterproof. It is water resistant.

Gas graphite reactors are the reactors all countries with nuclear weapons programs have used, natural uranium fueled reactors, to build their nuclear weapons. Nobody has done it with light water reactors, and there are good technical reasons for that.

Senator ROBB. I mention that only in the context of your earlier comments which suggested that the additional end product available from the 50 and the 200 megawatt reactors that were on line and scheduled to begin operation in the not too distant future would produce a certain amount of material from which  $x$  number of devices could be constructed given current technology, and the suggestion that a different, but not impossible, task might have confronted those who looked at the end product from the light water reactors. Is that an unfair comparison?

Ambassador GALLUCCI. Fifteen years down the road, when there would be some buildup of spent fuel from light water reactors, there would be a possibility, a technical possibility, that they would forego any further fueling of the reactor, to break agreements, and reprocess that material, and try to build a reprocessing facility. So the steps would be they would have to walk away from the reactors which could not operate, they would have to take the fuel out, build a reprocessing facility that could handle zirconium clad fuel. Then they would have to be able to build weapons that use plutonium that have been irradiated for the times normal to light water reactor operation with all the problems that entails. That is a technical possibility.

Senator ROBB. Given the willingness to address those questions, the quantity of material that could be used for weapons production, if they made that decision and decided to abrogate all of the existing agreements, would be a very substantial increase over their capacity with current technology. Is that correct?

Ambassador GALLUCCI. I would argue, Senator, very rapidly that, while I want to make a distinction between maybe 6 or 7 kilograms that North Korea could possibly have and the 200 kilograms a year they could have, the difference between 200 kilograms and 2,000 kilograms probably, in strategic terms, is not that much once they are in the neighborhood of being able to build 30 nuclear weapons a year.

Senator ROBB. We could spend a lot of time on this. My time has expired. Senator Murkowski.

Senator MURKOWSKI. Thank you.

Mr. Ambassador, I am going to try to be a little more direct with my questions. In your best judgment, is it accurate or inaccurate, true or false, or yes or no.

Along with what Senator Robb's line of questioning was, is it basically true that the light water reactors which we are prepared to provide to the North Koreans would produce potentially nearly two times more weapons useable plutonium than would have been obtained from the existing and planned reactors? You kind of answered it, but you kind of did not.

You are qualifying it and I am saying weapons useable in the sense of what it is going to produce.

Ambassador GALLUCCI. Senator, in one sense there is no such thing as weapons grade plutonium.

Senator MURKOWSKI. I'm talking about this light water reactor that we are going to put in.

Ambassador GALLUCCI. I know, Senator. And I'm afraid I am not going to be able to give you a yes or a no.

Senator MURKOWSKI. All right. My second question is basically, is it true that the amount of interim energy being provided under the framework, which is 500,000 tons annually, is really eight times the amount of energy that would have been supplied by the North Korean reactors?

Ambassador GALLUCCI. Senator, I want to answer that. I also hope we get an opportunity to go back to the first question.

My understanding, based upon the technical analysis done by the Department of Energy while I was in Geneva negotiating the agreement, is that the 500,000 tons relates as closely as we could to 255 megawatts electric generating capacity.

Senator MURKOWSKI. So the answer then is probably yes?

Ambassador GALLUCCI. I'm sorry? How did you phrase the question?

Senator MURKOWSKI. Basically, is it true that the amounts of interim energy being provided under the framework—that is, 500,000 tons annually—is eight times the amount of energy that would have been supplied by the North Korean reactors?

Ambassador GALLUCCI. No. Our intent was to match the heavy oil to the amount of energy that would have been produced by the 255 megawatts.

Senator MURKOWSKI. So it is not true?

Ambassador GALLUCCI. It's not true. That is my understanding.

Senator MURKOWSKI. All right. Do you have evidence that North Korea has attempted or been involved in smuggling plutonium from Russia?

Ambassador GALLUCCI. None that I am aware of, Senator.

Senator MURKOWSKI. Are you aware that in June of 1994, the head of the Russian counter intelligence organization stated in a news conference that the North Korean attempts to acquire "components of nuclear arms production" was causing special anxiety in that agency?

Ambassador GALLUCCI. I am aware of not that particular quote. I am aware of certain statements that have been made by some Russians at some times about North Koreans, and I would be happy on another occasion, perhaps in closed testimony, to go into that.

Senator MURKOWSKI. Well, since it was public, I felt it appropriate to bring it up today. It came up at a news conference. But it would cause one to have a little bit of alarm, if it is true, relative to the intentions of the North Koreans.

In the agreement which is nonbinding, in the Agreed Framework, is there anything that prohibits specifically the North Koreans from importing weapons grade plutonium from outside sources?

Ambassador GALLUCCI. No, Senator, there is not.

Senator MURKOWSKI. OK. You mentioned that the Security Council—

Ambassador GALLUCCI. Excuse me, Senator. But if they did, they would have to subject that to IAEA safeguards.

Senator MURKOWSKI. Under the agreement?

Ambassador GALLUCCI. Under their safeguards agreement. Yes, sir.

Senator MURKOWSKI. In other words, the agreement is the five reactors for which we have inspection, and they would be required under the agreement to allow inspections of anything that they were importing?

Ambassador GALLUCCI. Absolutely.

Senator MURKOWSKI. But they might choose not to?

Ambassador GALLUCCI. If they choose not to, they would not be in compliance with the agreement.

Senator MURKOWSKI. Well, they are kind of not in compliance now because they don't have inspection on the waste sites.

Ambassador GALLUCCI. Senator, I'm afraid I have begun to speak loosely and have talked about the agreement, and there is one "agreement" and one "Agreed Framework" and I have not been speaking with as much precision as I need to. Let's take the scenario again more slowly.

North Korea imports plutonium. Assuming anybody knows they have imported plutonium, they would then be obligated under their IAEA safeguards agreement to add that to the inventory and subject it to safeguards. If they failed to do that and, thus, in that way violated their IAEA safeguards agreement, they would not be in compliance with the Agreed Framework and we would be back where we started.

Senator MURKOWSKI. But in the context of where we are, we basically exempted them from the IAEA in this nonbinding agreement in the sense that the agreement under the Nonproliferation Treaty requires inspection of all sites and in this agreement we have said OK, all sites except the two waste sites, theoretically.

Ambassador GALLUCCI. Under the Agreed Framework, we are going to be taking steps, delivering the oil and doing these other things, before they are in full compliance in that way.

Senator MURKOWSKI. I understand.

Ambassador GALLUCCI. That's correct.

Senator MURKOWSKI. At a certain time sequence down the line.

This brings me to a point that you have been referring to from time to time. We are going to have the opportunity to inspect before that light water reactor is on-line.

Ambassador GALLUCCI. I'm sorry, Senator, we're going to have what opportunity?

Senator MURKOWSKI. The IAEA is basically going to be able to inspect these two sites that it cannot inspect now.

Ambassador GALLUCCI. Senator, long, long, long before that.

Senator MURKOWSKI. Long before that. But let's be specific. When we say "long before that," it's fair to say before the light water reactor is on line.

Ambassador GALLUCCI. Senator, I need to say that under the terms of the Agreed Framework, no significant nuclear components for the construction of the reactor can be delivered until they are in full compliance.

Senator MURKOWSKI. I'd like you to supply for the record a definitive analysis of whether that means fueling for the light water reactor. In other words, it's the fueling.

Ambassador GALLUCCI. I can supply that right now. No fuel.

Senator MURKOWSKI. I understand no fuel. But I mean are we going to have basically the reactor set up and in there with the exception of the fuel? We talk about components, and that means different things to different people.

Ambassador GALLUCCI. Senator, I really want to satisfy you on this point and I can do that if we can go to the Confidential Minute in a confidential setting.

Senator MURKOWSKI. Well, I would like to have for the record what you feel you can share with us. You may not want to do it now, and I understand that. But I think it is a point that needs some definitive understanding.

Ambassador GALLUCCI. Senator, I can do that now because I can describe to you that we envision a normal, commercial—

Senator MURKOWSKI. How much of the \$4 billion are you going to spend, roughly before—just give me an idea?

Ambassador GALLUCCI. Probably less than half.

Senator MURKOWSKI. OK. That's fine.

You indicate that the Security Council could not have made the agreement that the U.S. made. In other words, you said it did not belong in the parameters of the U.N. or they could not have made the agreement. Why?

Ambassador GALLUCCI. I cannot answer that, Senator, in any way other than to say that I don't believe the Security Council, as

an entity, could have engaged in this negotiation over those 16 months.

Senator MURKOWSKI. Well, they certainly have an interest in it and an obligation.

Ambassador GALLUCCI. They not only had an interest, but we kept them well informed and we were supported by the throughout and still are.

Senator MURKOWSKI. But we have undertaken to bind ourselves under the nonbinding agreement in the sense of the President's letter and using his office.

Ambassador GALLUCCI. The President has committed himself and his office in the way the letter describes. That's correct.

Senator MURKOWSKI. You don't anticipate getting any letter from the North Korean President?

Ambassador GALLUCCI. I don't anticipate that, nor did we ask, nor do we seek nor do we want one.

Senator MURKOWSKI. We made quite a point of the oil being crude oil and that it can only be used for power generating purposes. But isn't oil coming in fungible? It is going to displace other oil. So, in reality, we are putting more energy into North Korea and it is going to relieve oil that would have to go to power plants to be used to refine, or for the military, or whatever.

Ambassador GALLUCCI. On a substitution argument, not this oil, but on an argument of substitution, one could say that if they decided not to increase the amount of energy that they produced, in other words, not to use the oil to increase and contribute to economic development, but, instead, stay at the level they were, substitute the oil that they would have refined at that refinery, they would then be able to refine that oil, one could argue, to another form for other uses.

However, the North Korean capability to refine heavy oil is fully used. And when additional heavy oil is made available, it would not have additional refining capability to refine more heavy oil. If they had the additional refining capability, then the substitution might be a problem.

Senator MURKOWSKI. I appreciate your providing us with the record relative to what their capacity is for refining and what is utilized because I think that is an important point.

I would also ask, Mr. Chairman, that the record reflect a request for a complete list of nuclear components, which ones, basically, would be needed for Congressional approval for the funding of some \$4 billion or thereabouts.

Senator ROBB. The record will reflect that request.

[The information referred to follows:]

In execution of obligations under the U.S.-DPRK Agreed Framework, DOD was directed to contract for the supply of 50 thousand metric tons of heavy fuel oil with a maximum 2 percent sulfur content. This is residual fuel oil of a general kind used for stationary thermal heating, in power generation facilities, and as ships bunker fuel. The usefulness of this product as an input to further refining processes (for the manufacture, for instance, of militarily useful mobility fuels such as jet kerosene or diesel fuels) depends primarily on the type and availability of cracking or residual fuel conversion capacity in the receiving state, in this case, the DPRK. The facilities for which this fuel is destined, at Sonbong, do not contain the refining equipment necessary for extraction of militarily useful fuels from this oil. Furthermore, because the Sonbong facilities have not operated recently, there is no question of a substi-

tution effect coming into play, of diversion of higher-grade oil from this facility to military uses once the heavy fuel oil is delivered.

Senator MURKOWSKI. I guess I have expressed my concern with the agreement relative to the manner in which it binds the U.S. I just feel that our allies have been happy to see us take this obligation on, recognizing that they will support it, but that they are not bound in the eyes of the world to accept the responsibility of reducing the potential nuclear threat that the North Koreans may or may not have. It is our obligation and they are going to help.

It is easy to sit here and second-guess our negotiators, and I guess that is what we are doing. Maybe that is part of the process, and some might say it is even part of the job.

But it would seem to me that when you negotiate, you kind of go in with a bottomline. I don't know and I suspect you don't know what the North Korean's bottomline was. But it seems to me one might assume that it was that they are a poor nation, they need power, they have to increase the standard of living of their people. They look at the South Koreans and they see this inequity, or at least there is greater likelihood that they are seeing it. So one might assume that the bottomline of the North Koreans might be, since it is very difficult to develop their own nuclear power generation, that if they could find some way to get assistance for a light water reactor, in the meantime some heavy oil would achieve their objective, their bottomline. But if they could keep their waste sites and whatever they may or may not have on that site or off that site, as you said, they are going to go for it if they can get it.

I just cannot understand why we didn't come in with a bottomline, that bottomline being full inspections under the IAEA, which we demand from everybody else, and if they agree to that, then we give them the oil, then we give them the commitment on the light water reactor.

It seems to me one could make a parallel here that we have ended up with a situation where their birds are still in the bush. Their birds are the waste sites and whatever nuclear capability they have. But they also have the two birds in the hand. They've got the oil from us for an extended period of time and the commitment to make a best efforts effort to build this light water reactor. I guess that is my bottomline.

Ambassador GALLUCCI. Mr. Chairman, I beg for a rejoinder.

Senator MURKOWSKI. You are entitled to one. [General laughter]

Ambassador GALLUCCI. Senator, it is time for some forest comments here because there are a lot of trees that we had to cover. But if you would take a step back, I like the way you approach this, in terms of what the bottomline was.

Before this subcommittee, I have been asked what their bottomline was over those many months, and the key question all the time it was being asked is are they serious in these negotiations, are they really going to give up that nuclear weapons program to get what they say they want? In fact, do they really want light water reactors? Are they stalling?

Some Senators may remember that question. It kept coming up. Is this for real?

Senator, with the agreed framework, if they stick to it, we have answered the questions. For me, it is clear they are giving up this

nuclear program if they stick to the framework. They cannot do what they say they are going to do and have a nuclear weapons program. That is the first point.

Second, it is clear they want the energy. It is clear they want the light water reactors. On the question of the fuel, I understand they, in fact, cannot further refine this heavy oil. I understand that this heavy oil is going to go to fuel a plant which is not now operating. They desperately need this energy for what they desperately believe they must do, and that is more economic development.

I believe, fundamentally, this Agreed Framework answers those questions—if they stick to the Agreed Framework. I think the question for you, Senator, and for us is does the Agreed Framework adequately protect us against a North Korean decision to renege. My argument this morning has been to you that a focus on the radioactive waste sites, while politically understandable and important, is not the proper test. It's not only their bottomline, Senator, it was our bottomline. Our bottomline was we could not walk away with just compliance with the safeguards agreement. We think we got that stretched out longer than we would have liked, but we needed to get at the plutonium and the spent fuel. We needed to get at those reactors. And we did. We put that first.

In the end, it was a negotiation. Areas that we could compromise on—timing—we decided that that is what we needed. From a North Korean perspective, you asked a natural question, and anybody would ask well, why didn't you get everything you wanted and then you could give them what they wanted. Not surprisingly they had a different view.

Their view was that OK, you want the special inspections. That is one of our trump cards. You give us the light water reactors, we'll give you the special inspections. It took us months to go from two light water reactors on line before special inspections to a point at which they get no nuclear equipment. But they do get the beginning of the light water reactor project. A point in the project when they say they will believe we're serious, that we are really going to build these plants, we would not start and go that far down the road if we were not serious.

Senator MURKOWSKI. Well, \$2 billion is a pretty good chunk of taxpayer money.

Ambassador GALLUCCI. It is serious. But if they don't abide by safeguards, can you imagine the South Korean Government continuing to construct those reactors in North Korea if they do not come clean on the safeguards issue? I cannot. It is inconceivable, and the North Koreans know that.

I do believe, Senator, that you have asked the right question. I would only ask that you think harder about what the test is. That's all.

Senator ROBB. The classic dilemma of whether a glass is half empty or half full I think is what we are working on in part at this point.

Senator ROBB. Senator Pell.

The CHAIRMAN. Thank you, Mr. Chairman.

Am I correct in saying that any technical assistance or equipment given to the North Koreans in accordance with this agree-



ment would have to be submitted to both the House and the Senate for specific approval?

Ambassador GALLUCCI. I believe so, Senator, the agreement for cooperation.

The CHAIRMAN. Will the request be made for additional funds?

Ambassador GALLUCCI. I'm sorry, Senator?

The CHAIRMAN. For additional funds, would you be requesting additional funds?

Ambassador GALLUCCI. The situation on funding, as I understand it, is the expenditure of funds right now by the Department of Defense and for the \$5.5 million can proceed without coming to Congress under existing authorities; that the couple of hundred thousand dollars the Department of Energy would expend to clean the spent fuel pond could be accomplished without coming to Congress. But beyond that, expenditures either by the Department of Energy or anybody else will require us to come to Congress.

The CHAIRMAN. What is being done specifically to persuade the Japanese and the South Koreans to help finance the project?

Ambassador GALLUCCI. We have kept the Japanese and Koreans as close to this negotiation as physically possible over the 16 months. We believe they are entirely on board, as we say, with this agreement. They have agreed to take on leading roles in the case of Japan, and a central role in the case of South Korea. Those consultations took place in Washington just a few weeks ago, the last round. We will be consulting further with them in the coming weeks and we are confident, based on those consultations, that they will play the roles they say they will in making good on this commitment.

Senator MURKOWSKI. Mr. Chairman, would you excuse me, please, and thank you, Mr. Ambassador.

The CHAIRMAN. Do you believe that this agreement will move North Korea more toward a responsible role?

Ambassador GALLUCCI. I believe, Senator, that we have a very good chance of slowly bringing North Korea into the community of nations and making it an operating element in the Northeast Asian economic miracle, if I can put it that way.

The CHAIRMAN. Now if North Korea already has nuclear weapons, doesn't the negotiation and adoption of this agreement seem to justify the country, that we have permitted a small country to move ahead in that field without protest?

Ambassador GALLUCCI. Senator, the Agreed Framework requires the North Koreans to come into full compliance with its safeguards commitments under the Nonproliferation Treaty. If it should be determined as a result of the inspections and whatever else the IAEA decides it needs to do that North Korea has additional plutonium or actually has fabricated a nuclear weapon, then that would all have to be undone under the terms of the agreement.

The CHAIRMAN. And who would see that it was undone? The IAEA?

Ambassador GALLUCCI. The IAEA would have to determine that they were in full compliance with safeguards and all material would have to be subject to international inspection.

The CHAIRMAN. Basically, then, the purpose of the agreement is as much a political purpose, to bring North Korea into the family of nations, as it is a specific arms control agreement?

Ambassador GALLUCCI. Senator, that is correct. Our hope has to be that we can get at the other issues, beyond the nuclear issue, the conventional force problem, the ballistic missiles, concern about servicemen, concern about human rights, throughout the political process that is envisioned in the agreement.

The CHAIRMAN. And would you be free to say what type of contingency plan you have made if the North Koreans backtrack on this agreement?

Ambassador GALLUCCI. Senator, in a general way, it has been, a specter has haunted the negotiations, and that is a return to sanctions. I think, as you know, Senator, if we did need to return to sanctions, we certainly would do so. We were on the road to sanctions and that would have had implications for our own force presence in Northeast Asia, and I believe the North Koreans are well aware of that.

The CHAIRMAN. Thank you very much.

Ambassador GALLUCCI. Thank you, Senator.

Senator ROBB. Thank you very much, Senator Pell. Senator Pressler.

Senator PRESSLER. Thank you very much, and welcome here. I have been listening with great fascination and many of my questions have been covered in part.

I have some charts that I wish to illustrate my questions with. First of all, let me ask you this. As a former U.N. inspector in Iraq, would you not agree that technical means and limited inspections are inadequate to deal with a hostile power?

Now I know that there are technical means and limited inspections. In this case, we are dealing with a hostile power. I suppose with a friendly power, where we know they would not play any tricks on us, this would be all right. But what about that?

Ambassador GALLUCCI. I think, actually I appreciate, Senator, the reference to the Iraq experience because I think that we all have been informed by that in a number of ways. First is because we know to be very careful about acknowledging that we can never know what we don't know, and, as it turned out in Iraq, there was a great deal about the Iraqi nuclear program that neither our intelligence community nor anybody else's ever knew anything about. Never mind the IAEA, I mean here that nobody knew about.

However, another lesson of Iraq was that once inspectors are free to go where they need to go, and that is IAEA inspectors, and once inspections can be informed by, as we say concerned nations, such as the United States, then a great deal more is possible.

I do not think, in the case of North Korea or anywhere else, we can ever be absolutely certain there is not something hidden from inspectors. But between the IAEA and the access that it is negotiating and that it will achieve under the Agreed Framework, we have reason to believe, if I can put it that way, that we will be able to follow the nuclear program that we have been aware of over the last 10 years.

I cannot exclude, again, based on the Iraq experience, that there are not some facilities unknown to us, to the IAEA, to the South

Koreans, to the Japanese. No one will offer an assurance or say that that is impossible. We think it extremely unlikely.

Senator PRESSLER. OK. Last December, IAEA Director Hans Blix had a meeting. We were over in Europe with Senator Brown and Senator Cochran, and he flatly stated to us what I have on the chart (indicating): "I want to go anywhere, any time in North Korea." That was a really strong statement and he repeated that.

Looking at the other chart of North Korea's mountainous terrain, does that not make sense to want to go anywhere, any time, first of all? And why didn't the administration insist on "anywhere, any time" inspections in North Korea, as Director Blix asked for?

Ambassador GALLUCCI. Senator, Hans Blix would ask for that because he also learned from the Iraqi experience. It was after Iraq and after the Special Commission of the United Nations, combined with the IAEA, found everything that it found in Iraq that the IAEA asked to inspect sites that were not declared to it by the host government, by North Korea, for the first time in the North Korean case. These are called special inspections under the safeguards agreement. That is where this comes from.

Under the Agreed Framework, the North Koreans are obligated to accept all safeguards measures the agency may deem necessary. The area in which we provide for the IAEA inspections to be postponed, in a sense, by not requiring that it be conducted in order for the agreement to proceed, is in the area of the question of past nuclear activity, past reprocessing. If the Director General of the International Atomic Energy Agency gets reason to believe—and it is unlikely that he would get this on his own—but if he has reason to believe there is another site or another facility that would need to be inspected, then the United States would support that request by the agency to go someplace else.

But the only area that we are under the Agreed Framework putting a fence around is that area which goes to past plutonium accumulation from that reprocessing facility, from the fuel generated by that 5 megawatt reactor. We are not excluding the IAEA's other full scope safeguards obligations.

Senator PRESSLER. But you would agree that under Hans Blix's definition that he gave to a delegation of Senators, of which I was one, was last December, exactly a year ago. "I want to go anywhere, any time" in North Korea—we have not met that standard, have we?

Ambassador GALLUCCI. We certainly have not in the sense of having an Agreed Framework which postpones any implementation on our part until Hans Blix can go to those two radioactive waste sites because those are places he wants to go to which he, right now, cannot go by the North Koreans. But it is also true the Agreed Framework, while providing for that to eventually take place, does not provide for that to take place now. That is accurate.

Senator PRESSLER. I have a couple of more charts here.

Again, last December, Director Blix told us in our meeting with him, told us very forcefully, that the United States should not set a precedent in its negotiation with North Korea that Iran and others could use to avoid their NPT commitments.

I have a statement by former Secretary of State James Baker indicating that this agreement sets an unfortunate precedent. Do you agree with his analysis?

Now on these charts we have the statement, "Don't set a precedent Iran can use as an excuse." Those are the words of Hans Blix. Then, on the other chart we have the words of Secretary Baker: "The U.S.-North Korea agreement 'undermines both the international nonproliferation regime and peace in Northeast Asia.'"

Ambassador GALLUCCI. I disagree with the proposition that we have set a bad precedent or failed to support the international safeguards regime.

Senator, one of the most important things to recognize is that the United States negotiated an Agreed Framework which requires North Korea ultimately to come into full compliance with its safeguards obligations and do whatever the IAEA requires to satisfy itself, may deem necessary to judge North Korea on full compliance, that that was not a prospect until we had this agreement. That is a result of this agreement.

The principle that the IAEA determines where it must go and what it must do is enshrined in the Agreed Framework. There is the issue of timing, and we have stipulated that, on the question of timing, I said, I believe in my opening statement, that, quite frankly, we would have preferred that that be implemented sooner. This was a negotiation. We had other priorities in terms of our real security concerns, but we were not going to put the question of the safeguards regime at risk and do not believe we did because we negotiated an agreement that ultimately provides for full compliance down to the question of special inspections.

So the first point is I don't believe precedent, as a concept, as a legal concept, applies quite precisely or translates quite precisely into international politics. I don't believe states behave like courts of law to determine what they will do in a particular case. There are lessons perhaps, and I think there is a lesson here. The lesson is that the United States does not, will not walk away from a safeguards violation. And we have not.

Senator PRESSLER. But can Iran use this precedent as an excuse?

Ambassador GALLUCCI. Senator, Iran is to be judged according to its safeguards obligations, and I don't think there should be any reason, based on this or anything else, to suggest anything otherwise. Iran is not North Korea.

I find it unlikely that South Korea will play a central role in building light water reactors in Iran. This is an implausible to me. The situation is entirely different.

North Korea is a case in which you had an enormous gas graphite program underway and that program is going to be put aside by virtue of a trade in which it accepts a much more proliferation resistant technology. The situations are entirely different.

Senator PRESSLER. Now the United States-North Korea agreement at least contemplates the transfer of U.S. nuclear technology to North Korea. Would that be a true statement?

Ambassador GALLUCCI. Yes, it would.

Senator PRESSLER. But DIA is telling the Congress that North Korea will cheat on any agreement it signs. Is that a true statement?

Ambassador GALLUCCI. I don't know that to be true, Senator. If you have a quote from the DIA, I guess I would——

Senator PRESSLER. Well, I do on the chart over there (indicating). I am using all of these charts.

It is on the other chart. Let me see if I can read it from here. "It says based on North Korean actions to date, DIA assesses that the North Koreans will continue its nuclear weapon program despite any agreement it signs to the contrary." That was Lt. Gen. James Clapper, Jr., U.S. Air Force, Director of the Defense Intelligence Agency, to the Senate Select Committee on Intelligence on March 22, 1994.

Ambassador GALLUCCI. I am not at all surprised that General Clapper made that statement. I would respectfully suggest that you ask General Clapper how he feels not on March 22, 1994, but let's say on December 1, 1994. The second point I would like to make is——

Senator PRESSLER. Do you mean he recanted that statement?

Ambassador GALLUCCI. No. I think all of us always ought to assess, to make our assessments based upon the latest information available.

Senator PRESSLER. But he did make this assessment and he gave it as his official testimony up here.

Ambassador GALLUCCI. Senator, it does not pay for me to try to second guess General Clapper.

Senator PRESSLER. And this is March 22, March 22, 1994.

Ambassador GALLUCCI. I understand. It does not pay for me to try to second guess General Clapper's judgment. I would say that if General Clapper is correct—and he may well be correct that North Korea will not abide by its undertakings in the Agreed Framework—the weight of the argument I have tried to make today is that under that circumstance (a) we will know it as the agreement is verifiable, and (b) at any point at which that may happen, the United States of America will be better off for having had the agreement up till that point than if it had not negotiated the agreement.

We are protected against the North Koreans reneging on their undertakings.

Senator PRESSLER. Part of the agreement says, "As necessary the United States and North Korea will conclude a bilateral agreement for cooperation in the field of peaceful uses of nuclear energy." So that is where we would contemplate the transfer of our nuclear technology to North Korea.

Ambassador GALLUCCI. The way this would happen, Senator, most likely, is that as South Korea was proceeding to construct the light water reactors, it would subcontract a portion, perhaps of some of the more sensitive nuclear component construction, to American vendors—a vendor or vendors—and that in order for that vendor or those vendors to export, they would, under our law we would have to have an agreement for cooperation in place. So we would have to negotiate an agreement which would come before Congress for approval.

Senator PRESSLER. In summary, first, it does not give the IAEA the "anywhere, any time" inspection authority Hans Blix said it wanted. Second, it establishes a very unfortunate precedent. Third,

it runs a high risk of American nuclear technology furthering the North Korea bomb program and the American taxpayers will have to pay billions for it. Are those safe assumptions?

Ambassador GALLUCCI. Senator, I am so glad we have a chart there because there are four points and every one of them is wrong. [General laughter]

I welcome the opportunity to have them disaggregated in that way, so that I can speak to them clearly.

Senator PRESSLER. OK.

Ambassador GALLUCCI. First, on the no "anywhere, any time" inspections, the agreement provides for exactly inspections anywhere, any time, in full compliance. It is not something that happens right away. But this agreement cannot be consummated without agreement to inspections anywhere, at any time.

On the second point, a troublesome precedent, I think that "precedent" is not a good word; "lesson" is much better, and as a lesson, I think it is an excellent lesson. The United States of America, the Security Council of the United Nations will not walk away from a material violation of safeguards, will not leave its allies, the United States will not leave its allies confronting a nuclear weapons program in another country without dealing with it. And I think we have done exactly that.

With respect to the transfer of U.S. nuclear technology despite DIA's warnings, I take DIA's warnings based upon the past activity of North Korea quite seriously. It is because we knew we were dealing with North Korea and not, for example, with Canada that we negotiated an agreement of the kind we did in which we are very well protected against any possible steps by North Korea: (a) to violate it and have us not find out—we think we would find out; and (b) to be in a position, a better position for having negotiated the agreement than if we had not.

On the last point, the American taxpayer may be asked to pay some tens of millions of dollars. The billions of dollars are, of course, going to have to be paid in one way or another. The central role in those billions of dollars the South Koreans have said repeatedly they will take on. Other countries will help. We expect Japan to help.

We are putting together a consortium so the burden will be spread broadly in the international community. Exactly how the burden will be spread around I cannot tell you at this moment. We have just started to put the consortium together.

But the burden on the American taxpayer will be substantially less than that, and I am suggesting to you that it will be measured in tens of millions of dollars, not billions.

Senator PRESSLER. Well, I have been in Congress for about 20 years, and when tens of millions are quoted at the witness table, they usually turn out to be billions eventually.

But, in any event, I think where we really have a disagreement is on the DIA's warnings. It seems strange to me that in March we would have a statement from the DIA to that extent. What has changed so dramatically that—

Ambassador GALLUCCI. Could we have to chart back. I am coming to like the charts myself.

Senator PRESSLER. Good. "Based on North Korean actions to date, DIA assesses that North Korea will continue its nuclear weapons program, despite any agreements it signs to the contrary." That is a pretty strong statement.

Ambassador GALLUCCI. It is. It is, indeed.

I like the first part of the statement, "Based on North Korean actions to date," because I think we could all agree very rapidly, Senator, that there is a lot of basis there for questioning whether North Korea will abide by an agreement.

Senator PRESSLER. What has changed in the last 12 months?

Ambassador GALLUCCI. I cannot tell you, Senator, that North Korea is going to abide by this agreement. I have no problem with the first part of that statement. What I am suggesting to you is that we have had a problem with a nuclear reactors program. We do have a problem with the ballistic missile program. We negotiated an Agreed Framework which, if the North Koreans abide by it and General Clapper turns out to be incorrect—and I hope he does—will have solved the problem.

The question I think is if General Clapper turns out to be correct and North Korea attempts to continue its nuclear weapons program despite the Agreed Framework, then I think the important questions are would we know about it and, if at any point were that to happen, would we have been disadvantaged by having the agreement vice some other course the United States might have followed. I would answer those questions by saying we would know about it and we will have been better off for having had the agreement.

Senator PRESSLER. Would you have agreed with General Clapper on March 22, 1994, based on what you know?

Ambassador GALLUCCI. I certainly could not have been that clear as he was. I would say there was a serious risk that North Korea would not abide by the agreement.

I will say, Senator, right here before you today, having negotiated that agreement, that that risk exists. I am not going to bet any of my money on whether they are going to abide by this agreement. That is why we negotiated the kind of agreement we did.

Senator PRESSLER. Well, you know, as the system works here, I listen respectfully to witnesses such as you and to witnesses who appear before our committees here. That was DIA's assessment on March 22, 1994, and it clearly is a factual thing. It is their assessment. I think we have to take that very seriously.

I would think, as a member of the administration March 22, 1994, you would have agreed with that. Is that correct?

Ambassador GALLUCCI. Senator, the words in there, DIA assesses that Pyongyang will continue its nuclear program despite any agreements it signs to the contrary, no, I could not have reached that conclusion. I have worked in the intelligence community. I know exactly how I would have put it. I would have said there would have been a basis for concluding they might well not have abided by it. I would have hedged substantially.

Senator PRESSLER. But he didn't.

Ambassador GALLUCCI. That is why I commented—

Senator PRESSLER. But the official testimony may not be his.

Ambassador GALLUCCI. Absolutely, Senator.

Senator PRESSLER. It is the testimony of DIA, cleared through whatever channels they have. It is not just his testimony.

Ambassador GALLUCCI. That is a very clear statement, Senator. I have to give it to whoever drafted it, it is very clear.

Senator PRESSLER. Thank you very much.

Senator ROBB. Thank you, Senator Pressler.

Ambassador Gallucci, I would have to tell you that I was a little bit concerned when you just made the statement that you would not put any of your money behind the agreement considering the fact that we are putting taxpayer money and others there.

Ambassador GALLUCCI. No, not behind the agreement.

Senator ROBB. I want to give you an opportunity to clarify that statement before we go on.

Ambassador GALLUCCI. I welcome that. If I did not say it this way, let me say it this way now. I don't want to bet on full compliance with this agreement. I think there is a very good chance that North Korea will comply with this agreement. It is in their interest. It is massively in our interest.

Senator ROBB. You had made that point earlier, but I just did not want the record to be incomplete with respect to your confidence that what you have negotiated is, indeed, in the best interests of the United States as you had represented it.

Ambassador GALLUCCI. Thank you, Senator.

Senator ROBB. I thought Senator Pressler might be leading to this question, but he did not specifically ask about the prospect for activities that are, indeed, not a part of any formal notification by the host country. I think specifically about activities that might be taking place not only off the radar screen but below the surface, given the known propensity of the North Koreans to tunnel and to do a number of activities underground that many other countries might not attempt to complete in the subterranean atmosphere.

Is there anything in the agreement that either precludes or requires any reporting of any and all other activities that might relate to nuclear weapons capacity, and is there any safeguard other than the Hans Blix statement about "go anywhere, any time?" That sounds great, but if you don't know where it is, it is not all that valuable.

Ambassador GALLUCCI. I think, Senator, all I can say to that is under the safeguards agreement, if the North Koreans were doing anything that related to fissile material, to nuclear material, safeguardable material, they would have to report it; if there were a facility under construction, it would have to be reported.

Senator ROBB. In much the same way they would have had to have reported the construction of any nuclear devices that resulted from the reprocessing at the current 5 megawatt facility, isn't that correct?

Ambassador GALLUCCI. Well, the activity that is relevant to the design and manufacture of the triggering package for a nuclear weapon isn't, in fact, covered by the IAEA safeguards agreement. It is covered by their NPT Treaty obligation.

But, of course, when you talk, Senator, about a secret facility, and then for me to respond in terms of what their reporting obligations are, these do not match up terribly well. The best answer to that, I think, Senator, is that this depends upon our own national



technical means to inform the agency to be aware of ourselves as to what they are doing that they wish the international community not to know about. It is difficult to impossible to provide assurances that we will know everything that is going on in North Korea. Clearly, that is a very difficult task.

Senator ROBB. Let me just conclude that by asking you this. Do we believe, without going into any detail, obviously, in an open session, do we believe that we have a capability to detect in some form the kind of activity that we are referring to that might actually take place underground?

Ambassador GALLUCCI. I believe there is some capacity to do that. But in open testimony, there is little I can say and beyond that there is also an area of expertise that I am not fully up on.

Senator ROBB. Let me ask another question. We have spent a great deal of time discussing the current rods that are now in the cooling ponds and how they will be disposed of, although that really has not been specified. We have talked about—I cannot remember the terminology—a safe and appropriate—that was not the precise wording but it was something to do that effect. Without specificity, putting aside what is going to happen to the rods that are currently in storage, how about whatever—“in a safe manner,” I guess is the way that that was described for the moment—there were some press reports that this required that it be taken out of country. I am not sure that the agreement is as finite on that point as some of the earlier reporting.

Would you like to clarify that?

Ambassador GALLUCCI. Yes. I would like to clarify it in this way, which will be, I hope, satisfactory to you, Mr. Chairman, but not necessarily to everybody in the room.

I would ask you to look again at the Confidential Minute.

Senator ROBB. OK. I will leave it at that.

But the question that goes beyond the current rods or any subsequent component part of the entire process, looking to the end product of the light water reactor once that is in place, is there any understanding about how the—you mentioned it and I am well beyond my level of expertise in this area—but in some sort of a nonvolatile state that it reposes for a very long period of time, is there anything having to do with the disposition of these materials that have been contemplated at this point?

Ambassador GALLUCCI. Right now, we can say, based on the Agreed Framework, that the North Koreans would be precluded from reprocessing the spent fuel from the light water reactors and separating the plutonium. But what actually happens to the spent fuel, apart from saying it will not be reprocessed, is open for negotiation and for determination in a number of negotiations that have yet to take place: in the supply contract between KEDO and North Korea, in the fuel supply contract for the reactors, in the agreement for cooperation between the United States and North Korea.

Senator ROBB. But it specifically is expected to be included in the KEDO negotiations?

Ambassador GALLUCCI. It could, in fact, Senator, be put in any one of those three, and the most important objective, of course, to make sure the plutonium was not separated, we might, in fact, seek the option to have the fuel removed from North Korea. At this

moment, there are vehicles for negotiating that. We have not yet negotiated that.

Senator ROBB. You mentioned, in response I think it was to one of Senator Pressler's questions, or I guess it was his chart—I meant to ask him if he has any more charts that he wanted to display before he departed—that it was not a bad precedent, though you preferred “lesson.” But I am more concerned not about the specifics but about the overall position vis-a-vis the United States and either an actual or a prospective breach of a current agreement which would lead the United States to come to the table and bargain for return. That is the precedent that concerns me, not the specifics of whether South Korea would build a facility, but whether an unfriendly state, like Iran or others, that have some known capacity, would come and present the United States, either directly or indirectly, with a similar opportunity.

Would you clarify the precedential question that I have raised in terms of your belief as to whether there is additional concern that that might happen?

Ambassador GALLUCCI. It is our view, Senator, that the resolution of this issue the way we envisioned it in the Agreed Framework does not send a bad signal, is not a bad lesson for potential proliferators. I am shying away from the word “precedent,” as I said, because I believe it is suggestive of a mechanistic decision-making process in governments which is not realistic. But the idea of a lesson is fair, and we believe that the lesson of this agreement is that the United States and the Security Council will remain engaged when there is a breach, a material breach, of a safeguards agreement, as there was in the case of North Korea, that it will not be considered resolved until the IAEA is satisfied—that is what the agreement provides for—and that in the meantime, there will be no significant nuclear equipment delivered to that country.

In the specific context of North Korea, there are other activities going on, but that is for a broader political settlement. We do not believe that this situation in that way will be replicated again. If it were, this is a good outcome. But we do not believe there are states out there, and we could name them, that will look at this and get any comfort from it. I think they will understand that this administration and the United States of America is very concerned about the proliferation of nuclear weapons and will act as appropriate to see that the problem is addressed.

Senator ROBB. Certainly if you frame the question that way, that lesson is much more palatable than the lesson that many of us have been concerned about for some period of time, and that is that it might send a disquieting message to some of the other states with whom we are dealing.

Could you give us a very brief description. I realize that the KEDO specifics have not yet been negotiated. But what would you expect in a general sense, not in a binding sense at this point, as to who would serve on such a group. What international treaties or other rules would apply to it? Tell us that kind of thing. Just give us a little more flesh on that outline.

Ambassador GALLUCCI. I could, Senator, but I think it is still going to look like a skeleton at best. Our plan is to first work with the Japanese and Koreans to try to agree on a structure that is ac-

ceptable to the three of us. We would plan, then, to take a leading role, the three of us together, in the formation of KEDO, to come and invite other governments; certainly—and I don't mean this to be an exhaustive list—but certainly to invite the Chinese, the Russians, the Europeans, and some of our allies in the Pacific, Australia, Canada, to come together at a meeting in which we would form the consortium. We have already consulted with a number of these governments about the consortium and gotten expressions of interest. We have not sought financial contributions as yet.

The purpose of the consortium would be to provide this with a broad political base of support, but also a financial base. We would hope that some countries could make contributions in kind to either the effort at providing the heavy oil, or the light water reactor construction, or in managing the spent fuel problem. There are a number of activities that have to take place.

We would envision the consortium as having a charter, being an international entity, having a headquarters and a small executive, as drawing upon experts, expert consultants in the legal and in the architect/engineering area. To negotiate contracts, we would expect KEDO would negotiate both with the D.P.R.K. for the supply of the reactor and then negotiate with the prime contractor which we would expect, of course, to be in the Republic of Korea.

But the actual charter itself and the rights and roles of individual countries I really cannot get into until we have completed our diplomatic work principally first with the Japanese and the South Koreans.

Senator ROBB. As things now stand, would you expect to lead the negotiating team for the United States?

Ambassador GALLUCCI. I have been up till now, been representing the United States in the discussions with the Japanese and Koreans, and I would expect to continue to do so.

Senator ROBB. There is one point that I meant to raise earlier when we were discussing the President's letter to Kim Jong II. Implicit, I thought, in your response was that we are not looking for a letter and, indeed, we don't want a letter, whatever the case may be. The first question arises as to who might sign such a letter and what authority would they bring to that particular equation.

Is it your belief, and I cannot remember the name of your counterpart who represented North Korea in these negotiations, that he enjoys the same support from the North Korean side that you enjoy from the Executive Branch of the Federal Government, our Federal Government?

Ambassador GALLUCCI. He told me he did, Senator. [General laughter]

I believe he was a good representative of his government and certainly he was in close touch with the powers that be in Pyongyang. As you know, the letter that President Clinton sent was to His Excellency, Kim Jong II, Supreme Leader of the Democratic People's Republic of Korea.

Senator ROBB. I noted that.

In that capacity, did you observe any significant differences during your negotiations that started under his father and predecessor, the great leader, and eventually flowed to Kim Jong II, but

were started under Kim II Sung? In terms of the reporting relationships were there any perceptible differences?

Ambassador GALLUCCI. Not in any gross way. I would say that, as you will recall, Senators, there was a prediction after Kim II Sung's death that the transition would be rapid to Kim Jong II and that the transition clearly was not rapid. It may be that there were different power centers emerging in Pyongyang following Kim II Sung's death. I really don't know that.

Certainly, my opposite number assured me that there was a clear line of authority, that there were no ambiguities about who was in charge in North Korea.

Senator ROBB. Are there any uncertainties?

Ambassador GALLUCCI. Oh, I think there are going to have to be uncertainties about the future of that regime, and we, of course, are going to watch that as closely as we can.

But as I have had to say before, this is not a terribly easy situation to monitor. I think the intelligence community can speak in detail to that. But we will be watching that very closely.

Senator ROBB. I have a couple of quick questions before we get on to the panel of experts, the private panel that is going to follow you.

Could you give any indication of the results of your latest talks with Beijing in terms of the light water reactor's technology that has been discussed and what role they expect to play in this whole agreement?

Ambassador GALLUCCI. As you know, we have been consulting with the Chinese closely throughout the run up to the Agreed Framework. The Chinese have expressed great pleasure at the outcome, the Agreed Framework. It avoids for them one of the things they most hoped to avoid and that is instability in Northeast Asia on their border. It does so without sanctions and without military action. It deals with a nuclear weapons program that they had no interest in seeing flourish, either. So they are pleased at a negotiated outcome.

We will be talking to them in the context of the consortium about what role they might play. I have had some preliminary discussions with them, but they are really just that. I think I need to wait until we have an opportunity to talk to them and others about what role they might play.

It is not clear to me that there is a substantial role to be played in the light water reactor project. But I don't want to exclude that.

Senator ROBB. I have one other question, somewhat technical. The U.S. basis for the embargo had been based, at least in very large part, on the Trading with the Enemies Act. Do you envision that that will be lifted in whole or in part with respect to the negotiations as they proceed under the framework?

Ambassador GALLUCCI. I think in the first instance, we will be taking those steps that the President can take without seeking any legislative relief in the area of telecommunications and in some financing, banking arrangements. I think down the road we will be looking to do other sorts of things if North Korean compliance justifies that.

Senator ROBB. Ambassador Gallucci, I think that that covers most of the ground. Let me see. I had a couple of other things. I made so many notes that I may have misplaced them.

I wanted to ask for a clarification on Secretary Christopher's defined checkpoints.

Could you elaborate on that question? I don't think you included it in your summary.

Ambassador GALLUCCI. That's correct. I remember you mentioning it and I did not include it. So let me go back to that.

Without having the full context in front of me, I might not have this precisely right. But I think what the Secretary was referring to was that the delivery points for us, the significant delivery points—and it really is not in the heavy oil, it is in the light water reactor project, a \$4 billion project—come at, the first significant delivery point is in the negotiation of a contract where we actually agree to provide this. We will have to see whether the North Koreans have up till that point, and that is probably going to be still another 4 or 5 months off, whether they have maintained the freeze and whether they are in full cooperation with the IAEA to monitor the freeze on their 5 megawatt, the 50 megawatt and the 200 megawatt new reactors, the reprocessing facility, and have cooperated with us on the recanning of the spent fuel so it can be shipped out. That is first.

The second real checkpoint comes at the time when they have to do the special inspections or whatever else the IAEA requires. That is the point when we would deliver the significant nuclear equipment for the first reactor. So we will be looking before we deliver that equipment to make sure they are in full compliance with IAEA safeguards. The question about how much nuclear material they had produced in the past is resolved. The agency has all the access that it requires, anywhere, any time on the chart. Then they get significant nuclear equipment.

The third checkpoint is actually the completion of the first reactor. That reactor will not be completed until all the spent fuel that is in the pond is shipped out.

The fourth significant checkpoint is the completion of the second reactor. The second reactor does not get completed until all the nuclear facilities are dismantled. Those are the checkpoints.

Senator ROBB. OK. Just to followup on a comment that Senator Murkowski had made, he had asked that you supply for the record a complete list of those key nuclear components that are listed in the Confidential Minute to be delivered after North Korea's compliance with the safeguards agreement and, if you would, indicate which of those components are controlled by any export control regime and/or require congressional notification or approval. If you could supply that for the record, I would appreciate it.

Ambassador GALLUCCI. Certainly, Senator.

[The preprinted information referred to is in the committee files.]

1. International Atomic Energy Agency Information Circular 254 (July 1993), which contains the nuclear suppliers' export trigger list. These items are controlled the Nuclear Regulatory Commission under the Atomic Energy Act.

2. International Atomic Energy Agency Information Circular 254 (July 1992) which contains a list of nuclear-related dual-use transfers. These items are controlled by the Commerce Department under the Export Administration Act.

Senator ROBB. With that, I know that you have additional closed testimony today that is coming up, so we will excuse you. I thank you for joining us. This, clearly, was an issue that had concerned, and I am certain it still concerns many Members of the Senate and others, but particularly this committee with oversight responsibility, and while it might have been postponed until next year, the urgency of the various reactions to it, it seemed to me, merited a hearing at this time. I am very pleased that you were able to join us and I thank you for bringing your testimony before us.

Ambassador GALLUCCI. Senator, thank you very much. I appreciate it.

Senator ROBB. Thank you very much.

As Ambassador Gallucci concludes, I am going to ask the other four witnesses, who constitute the private panel, to come forward at this time and we will continue without a break.

Gentlemen, if you would please come forward, we will continue.

Gentlemen, let me begin by thanking you for both agreeing to testify and for your patience this morning. As you know, at one point when we had set up this particular hearing, you would have been the only presenters, and we had an opportunity to have Ambassador Gallucci to speak directly for the administration. And, as the person who negotiated for the U.S. side, it seemed to be especially important that we give him an opportunity to express the views of the administration before we started picking through the various elements and concerns that have been expressed.

But your testimony this morning is very much welcome. I am going to ask, unless there is a preference among you, that I take you starting at my left, which is your right, with Mr. Milhollin. I am going to ask each of you to give whatever statement you would like to give and we will go right down the line. Then I will have a few questions. We may be joined by others. But, as is frequently the case, that is never guaranteed. So, without further ado, I am going to ask Mr. Gary Milhollin to proceed. Mr. Milhollin is the Director of the Wisconsin Project on Nuclear Arms Control under the auspices of the University of Wisconsin. He has been on the University of Wisconsin faculty as a professor law since 1976. He is a veteran of many Congressional information sessions and testimony over a number of years. We are very delighted to have you with us, Mr. Milhollin.

**STATEMENT OF GARY MILHOLLIN, PROFESSOR, UNIVERSITY OF WISCONSIN LAW SCHOOL, AND DIRECTOR, WISCONSIN PROJECT ON NUCLEAR ARMS CONTROL, WASHINGTON, DC**

Mr. MILHOLLIN. Thank you very much, Senator.

I am pleased to be here. I notice that some of the points in my testimony were asked as questions. So I would ask that my testimony be incorporated as if read into the record, and I will try to summarize my remarks.

Senator ROBB. Without objection, your entire testimony will be included in the record and a summary would be welcome.

Mr. MILHOLLIN. I think the big question we have to consider here is whether the risks the agreement poses are greater than the benefits. I think the administration has done an admirable job of

pointing out the benefits, but I think it is also necessary to point out the risks.

So I will try to point out the risks from several elements of the agreement, starting with the light water reactors.

As we know, North Korea is getting two of these free over the next decade, worth \$4 billion. What is the risk?

The risk is that these reactors in fact make more bomb grade plutonium, and I say bomb grade plutonium, than the graphite reactors North Korea has now. The reason for that is simple. The two light water reactors total 2,000 megawatts. The existing graphite reactors, that is, the one that is now running and the two under construction, total only about 250. That is a factor of eight greater. So there is no question that these light water reactors will make more plutonium and they can make more plutonium for bombs.

An atom does not know whether it is peaceful or not. It just knows that it's an atom and it does what atoms do. You can run any reactor to make weapon grade plutonium. And if you have a very big reactor, you can run it to make a lot of weapon grade plutonium. I have given the numbers in my testimony. If you ran the light water reactors we are giving to North Korea to make bomb grade plutonium, you would turn out at least 70 bombs worth per year. That can be reprocessed into bomb useable fuel.

That is why we safeguard all of the light water reactors around the world that Mr. Gallucci referred to. If these were not risky, we would not be spending hundreds of millions of dollars to keep track of the plutonium coming out of them. In fact, we are and we should.

The reactors North Korea has now at present are only capable of producing about one bomb's worth of plutonium a year. North Korea hopes to bring on a couple more, but there is no guarantee that that will succeed or that they will operate correctly.

The question then is well, could you use the plutonium from light water reactors or from the graphite reactors for bombs. The answer, as I have already said, is yes. You can use either.

Are light water reactors more proliferation resistant? No, they are not. It all depends on what your intentions are and how you operate them. You can operate a light water reactor to make a lot of bombs. You can operate a graphite reactor or a heavy water reactor in an electricity mode so that it is not very good for making bombs.

You have a choice. In this case, the choice will be in the hands of the North Koreans. Unfortunately, their record is not very good.

We could cut off the fuel to the light water reactors if North Korea seemed ready to divert them to bomb making. But the North Koreans could wait for a year or two, until they accumulated a lot of production, that is, 30, 40, 50 bombs worth, and then they could divert the plutonium.

At that point, cutting off the fuel would not be a remedy.

The second issue we have talked about this morning is the plutonium that North Korea already has. The CIA estimates that North Korea has enough plutonium for one to two bombs. The agreement allows North Korea to keep that plutonium hidden for at least 5 years. The risk is, the CIA says, that there is a better than even chance that it is already made into bombs. If that is true, then

North Korea, in effect, remains a nuclear power while being paid not to be under this accord. And if it does not have the plutonium made into bombs, it has 5 years to work on that, to perfect a bomb secretly.

Now why do I say that?

It seems clear to me that surprise inspections in effect are banned for 5 to 7 years under the agreement, however long it takes to get to the point where the first key components of the light water reactor are ready to be delivered.

Why do I say that? Well, the agreement exempts North Korea from inspections of any place where the North Koreans have conducted previous plutonium activities, such as the two waste sites. If we get intelligence tomorrow that the North Koreans have smuggled some plutonium in from somewhere and are hiding it in a cave, we cannot go there if the North Koreans say no, that cave has evidence of our past plutonium-making activities.

In effect, we are giving them a pass on special inspections for 5 years. So if the North Koreans are trying to turn this one or two bombs' worth of plutonium into bombs, they can do so secretly without being bothered by us for 5 years.

Third, what happens to North Korea's nuclear potential? The potential consists of one reactor that has been running, two reactors under construction, a plutonium processing plant and some other activities.

They get to keep all of that until the next century. The risk is that they can take the performance under our agreement for 3, 4, or 5 years and then decide to abrogate, at which time their potential is still intact. They can then make more plutonium out of the fuel rods they have on hand and they can start to complete the reactors that are under construction. The only thing that prevents them from doing that is, I guess, the risk of losing some oil shipments, many of which they already can have received before they decide to breach.

I think that is one of the things that I think is the most risky about the agreement, that we, in effect, are letting the North Koreans up off the mat by dropping trade restrictions, by giving them oil, and by regularizing diplomatic relations with them before they come clean and while they still have a nuclear capability, which is hidden, and while they still keep their nuclear potential intact. That is the real risk.

Then there is the military threat from North Korea. As Ambassador Gallucci pointed out, it is not affected. The North Koreans can keep their army poised on the border and they can continue to develop and sell missiles. They are developing a missile now which reaches Japan from North Korea, which reaches Southern Europe from Libya and which reaches Israel from Iran and Syria. I think it is quite likely that those missiles will continue to be developed and will be actually sold.

The only purpose in such a missile is to carry a nuclear warhead. You don't spend all that money for a long-range missile to knock down one building. Nobody has ever built a long-range missile to deliver a conventional munition, except, perhaps, for cruise missiles. But this missile is clearly a nuclear delivery vehicle.



Then there is the question of the economy, which I have touched on a little bit, that is, North Korea's economy. In effect, it is getting rescued by this agreement because it is being held down now by oil shortages, by a trade embargo, by lack of diplomatic ties, by being considered a pariah state.

North Korea is going to get rid of all those things long before it gives up its nuclear program. So, from North Korea's point of view, this makes a lot of sense. North Korea gets back on its feet, it settles its transition problem, it starts getting trade, it starts getting diplomatic contacts, and it keeps all of its nuclear potential.

We are betting that at some point the North Koreans won't decide that it is smarter for them to then change course. When it comes time to deliver the components of the light water reactor which could be 5 or 7 years from now, that will be the time when North Korea has to decide to give up what it is hiding. North Korea could very well decide then that does not want to give it up, that it will simply retain what it has received and take its chances at the United Nations.

It will still have its army on the border to remind us of the cost of confrontation.

I want to talk a little bit about the Nuclear Nonproliferation Treaty. North Korea is now in breach of the treaty and will continue to be in breach of it until it allows full inspections. This will not happen for at least 5 years. So it is being let into the treaty with its hands dirty.

This is the first time any country has ever been able to join up, that is, join the treaty and get the "Good Housekeeping Seal of Approval" under the treaty without complying with its requirements.

South Africa was made to come clean before it joined the treaty. Brazil and Argentina both came clean before they joined the equivalent, which is the Treaty of Tlatelolco.

We are setting a precedent here which is that you can be a member of the treaty and still breach it at the same time. That is a precedent. It is not a lesson, it is a precedent. And the Iranians, the Iraqis, and the Pakistanis are all calling it a precedent.

Hans Blix has been referred to this morning. Mr. Blix is an eloquent speaker. He says that international safeguards are something that you have to take as a whole or not at all. He says it is like going into a restaurant. He says you have to order the whole meal; you cannot order *ala carte*. Either you join up or you don't.

In this case, North Korea is ordering *ala carte*. In effect, North Korea is getting its cake before it eats its spinach. It is getting the goodies, but it is not complying with international safeguards, still, and won't be for some time.

There is also a cost in the light water reactor deal insofar as other countries want to buy them. Iran has been trying to buy a light water reactor for a long time. So has Pakistan. We have been discouraging countries from making those sales. So far we have succeeded in Pakistan. In Iran, we are trying to get the Chinese not to sell the Iranians a light water reactor and we are also trying to get the Russians not to do that. If the Iranians, who have not broken the treaty, say that they think they are better than the North Koreans, more trustworthy, and should get a reactor, it is pretty hard to argue against that, or at least it is pretty hard to

convince other countries that Iran is a less worthy recipient than North Korea.

So what this does is undermine our ability, really, to keep the lid on dangerous nuclear transactions in the world. If we are going to countenance a transaction like this for North Korea and even participate in it, then it really does undermine our ability to stop these transactions elsewhere.

In conclusion, I would like to say that the agreement was reached under adverse conditions. There were no good options available at the time this was negotiated. The best time to confront this problem, the North Korean nuclear threat, was during the Reagan and Bush administrations. At that time, the program had not reached the threshold of success, there was still time for sanctions to work.

The difficulty with cutting off these programs is that if you use sanctions, it takes time for sanctions to work. You cannot wait till the country gets on or over the threshold before you do something.

The Reagan and Bush administrations pushed this problem into the Clinton administration. Now I think with this deal the Clinton administration is effectively pushing it forward into the next administration because that is the time the North Koreans are most likely to breach it. That is the time at which we are probably going to have to do something if they do.

I think it may be irresistible politically to push things off to the next administration, but it is a very dangerous way to deal with the spread of nuclear arms.

That concludes my summary. I did make some notes during Ambassador Gallucci's testimony of points that he made that I think need to be elaborated or corrected. But perhaps you could come back to me for that later.

[The prepared statement of Mr. Milhollin follows:]

#### PREPARED STATEMENT OF GARY MILHOLLIN

I am pleased to appear here today before this Subcommittee to discuss the United States-North Korean nuclear accord.

I am a member of the University of Wisconsin law faculty, and I direct a research project here in Washington that is devoted to tracking and inhibiting the spread of nuclear weapons to additional countries.

In October, the United States promised North Korea billions of dollars in aid in exchange for Pyongyang's pledge to halt its secret A-bomb effort. The accord comes after many months of hard work by U.S. negotiators. It is intended to close down North Korea's nuclear program by freezing North Korea's plutonium production, and by replacing its existing graphite reactors with new ones from the West. While portions of the pact remain secret, the part that is public presents both benefits and risks. The question is whether the benefits are greater than the risks.

The administration has described the benefits quite fully. I will concentrate on the risks, which are as follows:

**Light Water Reactors:** North Korea is getting two free reactors over the next decade, worth \$4 billion. The risk? These reactors will make more bomb-grade plutonium than the graphite reactors North Korea has now, including the ones under construction. Press reports to the contrary are simply wrong. Although light water reactors (LWRs) are less efficient at producing bomb fuel, these two giant reactors could turn out at least 70 bombs' worth of "weapon-grade" plutonium per year. North Korea's existing graphite reactors are only one eighth as big, and could make only about 25-30 bombs' worth per year.

I should explain how these numbers were arrived at. First, each Western-style light water reactor has a power rating of about 1,000 MW(e). That makes 2,000MW(e) for two. North Korea's existing graphite reactors are rated at only

255MW(e). That consists of the 50MW(e) and 200MW(e) plants under construction and the 5MW(e) reactor that has been running since 1986.

If operated to maximize electricity production, the two light water reactors would make at least 500kg of plutonium per year. That plutonium would be almost all "reactor grade." It could be used in bombs but would not be of optimum quality for such a purpose. If operated to produce "weapon-grade" plutonium, the light water reactors would only have to be shut down and reloaded more often. In such a mode they would produce at least 400kg each per year, enough for roughly 70 bombs if one assumes between five and six kilograms per bomb. The three North Korean graphite reactors would not produce more than 150kg per year, enough for 25-30 bombs.

I should point out that under the agreement, plutonium from the light water reactors will not be available for at least a decade, whereas more plutonium from the smallest graphite reactor could be available as early as next year. Also, if North Korea started to extract plutonium from the spent light water reactor fuel, the supply of fresh fuel for those reactors could be stopped. However, North Korea could wait until it had accumulated a year or so of plutonium produced from the first light water reactor before it moved toward extraction, which would give it about 35 bombs' worth. Thus, cutting off the fuel would not be much of a remedy.

I should also point out that light water reactors are unnecessary if the goal is simply to provide power. The United States could provide coal or oil-fired plants much faster and at a much lower capital cost.

**Pyongyang's existing plutonium:** The CIA says North Korea is hiding enough plutonium for one to two Nagasaki-sized bombs, which the agreement lets North Korea keep for at least five years. The risk? The CIA says there is a "better than even" chance that the plutonium is already made into bombs. If so, North Korea can remain a nuclear power while being paid not to be. If not, it has five years to perfect a bomb secretly, because surprise inspections are apparently barred until then. I say "apparently" because the agreement, in Section IV, gives North Korea at least five years to "come into full compliance with its safeguards agreement." If special inspection of the North Korea's two suspect sites is suspended for that period, it seems highly unlikely that other special inspections would be allowed.

**Pyongyang's nuclear potential:** Its three graphite reactors, its plutonium processing plant and its 8,000 plutonium-bearing spent fuel rods would be frozen and put under inspection until the next century, when the first light water reactor is completed. The risk? The facilities will not be dismantled until then, which means that North Korea could decide at any time to kick out the inspectors, turn on the processing plant and extract five more bomb's worth of plutonium from the spent fuel rods.

**Pyongyang's military threat:** Unaffected by the pact. The risk? North Korea's troops and tanks, massed on the South Korean border, could be fueled with other oil freed up by U.S. deliveries. North Korea can also continue to develop its heavy NoDong missile for sale to Libya, Iran and Syria. The NoDong is big enough to deliver a nuclear weapon to Japan from North Korea. It could also be launched from Libya to reach Southern Europe, and from Iran or Syria to reach Israel.

**Pyongyang's economy:** By January, North Korea will start getting free oil shipments that will eventually reach 500,000 tons of heavy oil per year. It will also be freed from its trade embargo and will get diplomatic ties leading to full recognition. The risk? North Korea could accept the oil, trade, and diplomatic benefits until it gets back on its feet. It could then kick out the inspectors and make five more bombs' worth of plutonium from the spent fuel rods. A revived and stronger North Korea would be harder to deal with than the North Korea we are facing now.

**The Nuclear Nonproliferation Treaty:** Under the October accord, North Korea agreed to begin complying with the Treaty and to open its seven declared sites to inspection. The risk? North Korea is still in breach of the Treaty because it has locked inspectors out of two undeclared sites, where the CIA believes evidence of secret bombmaking is stashed. Unlike Argentina, Brazil and South Africa, which were made to come clean before entering the Treaty or its equivalent, North Korea will be let in with its hands dirty, and they will stay dirty for several years. Hans Blix, the director of the International Atomic Energy Agency, has said that when a country joins the Nonproliferation Treaty, it must accept the whole menu of inspection rights. It can't order "a la carte." But that is what the United States has allowed North Korea to do. Pyongyang is getting cake before it eats its spinach.

**The precedent:** Never has the United States arranged for a country in violation of international inspections to get nuclear reactors. U.S. law forbids the sale of a reactor to a country in violation of international inspection obligations. The State Department hopes to finesse this point by withholding key components until the inspection questions are cleared up, but reactor construction will begin, years will

pass, and lots of money will be spent while North Korea is still defying the inspectors. North Korea also will start enjoying trade benefits and getting free oil while still in breach. This undermines both U.S. nonproliferation policy and the Nuclear Nonproliferation Treaty. After endorsing light water reactors for North Korea, it will be much harder for the United States to keep trying to block China and Russia from selling them to Iran—which is in full compliance with international inspections. Iran is already grumbling about being denied nuclear benefits. If Iran demands the same legal status as North Korea is getting under the U.S. agreement, including exemptions from challenge inspections, international inspectors won't stand a chance of finding the secret bomb program that the CIA thinks Iran is running.

**Conclusion:** This agreement was reached under adverse conditions, in which no good options were available. The best time to confront the North Korean nuclear threat was during the Reagan and Bush administrations. The program had not yet reached the threshold of success, and there was still time for sanctions to work. But those administrations pushed the problem into the Clinton administration. Now, the Clinton administration has made a deal that will probably push the problem into the next administration, since that is when a breach by North Korea is most likely to occur. Pushing problems off to one's successor may be irresistible politically, but it is a risky way to deal with the spread of nuclear arms.

## PHASES OF THE U.S.-DPRK ACCORD

### PHASE ONE: 1994–2000

*What North Korea Does:* Freezes, under inspection, three reactors, a plutonium plant, and 8,000 plutonium-bearing fuel rods; allows inspection of admitted nuclear sites.

*What the U.S. and its Allies Do:* Provide hundreds of millions in free oil and billions in new reactors, while allowing North Korea to keep any A-bombs it has secretly made and freeing North Korea from trade sanctions.

### PHASE TWO: 2000–2003

*What North Korea Does:* Allows full inspection of two suspect sites thought to contain evidence of bombmaking; answers all questions about its nuclear past; sends 8,000 plutonium-bearing fuel rods out of the country.

*What the U.S. and its Allies Do:* Increase level of aid; install key nuclear components and bring on line first light water reactor.

### PHASE THREE 2003–2005

*What North Korea Does:* Dismantles existing graphite reactors and plutonium plant.

*What the U.S. and its Allies Do:* Complete second light water reactor.

### IN ADDITION

*What North Korea Does:* Resumes diplomatic talks with South Korea on denuclearization.

*What the U.S. Does:* Pledges not to use nuclear weapons against North Korea.

Senator ROBB. I would like to do that. In fact, I was going to ask each of you to offer any observations that you thought were appropriate as to his testimony, whether there were points of specific agreement that were important or, perhaps more illuminating, those areas where you disagree.

Now I am going to ask Mr. Bob Manning if he will give us his testimony. Mr. Manning is a long-time Asia security specialist. He is now a Senior Fellow at the Progressive Policy Institute, widely published in the "New York Times," "Los Angeles Times," and others. Mr. Manning, we are delighted to have you with us.

## STATEMENT OF ROBERT A. MANNING, SENIOR FELLOW, PROGRESSIVE POLICY INSTITUTE, WASHINGTON, DC

Mr. MANNING. Thank you, Senator Robb. I am grateful for the opportunity to be here. As the hour is late, I would ask that my full statement be included in the record.

Senator ROBB. Without objection, the full statement will be included in the record.

Mr. MANNING. I will just try to make a few brief points and, to the best of my ability, will try to avoid being horribly redundant of what we have heard so far.

For me, the starting point in looking at this agreement is, number one, it affects vital American national interests in one of the most dangerous places of the world, the heavily armed and divided Korean Peninsula. Any assessment of the accord must place it in the larger context of U.S. policy toward the Korean Peninsula, of which it is only one, albeit an important one, but one element. Even if the agreement is wildly successful, we are still left with a million man army, 70 percent of it or so forward deployed within 100 kilometers of the DMZ, 8,000 artillery tubes, very little warning time, and all the rest.

The stakes are high, both in terms of stability in Northeast Asia and for the global nonproliferation system. As I think Bob Gallucci made the point, which I would underscore, there is no such thing as a 100 percent certainty. One has to make a judgment that the verification you are getting is adequate enough for you so that it is worth proceeding. I cannot stress enough that we don't know what we do not know.

This is a very critical point to me.

It would be a grave mistake to focus on this nuclear issue solely as a matter of proliferation, and, while it deserves and requires serious scrutiny, from a policy perspective it has to be viewed as a larger problem of security on the Korean Peninsula, in Northeast Asia, and, more broadly, of the reunification of Korea. That is what this is fundamentally about in the end.

The agreement itself is only a beginning, not the culmination of a Korea policy. I want to stress that.

I guess a key point I want to make is this. Is this a good deal for the United States? There are some issues for which there are no good answers, and I would submit that this is one of them. Having said that, on balance my conclusion is that it is worth pursuing in that, as was alluded to earlier, it is reversible. This is both a strength and a weakness in the sense that we get things up front, as Ambassador Gallucci alluded to, and they can be reversed. The things that North Korea is getting, such as a lifting of a trade embargo, can be reimposed; a liaison office can be closed; oil shipments can be stopped. I do not think they are getting tremendous benefits that are not reversible.

We do have a program that is very dangerous and is frozen there.

The larger problem for me is that there is no connection, direct connection, between this nuclear agreement, the Agreed Framework, which is kind of a road map for resolving the nuclear issue, and a larger road map for a Korea policy, which I find somewhat disturbing because all the other issues that have been mentioned of concern, from ballistic missiles to conventional forces, are not part of the agreement. What is required, in my view, is a larger strategy. I do not think it is conscionable to me that—of course, what is implicit in this agreement is a buy-out strategy. We are making a strategic choice that, rather than isolate, confront and

squeeze North Korea until they crack, we are trying to accommodate them, bring them into the community of nations, engineer a kind of soft landing, if you will, and a gradual reunification process. This is implicit in this agreement, though nobody is talking about that.

Also implicit is if there is a seller, you have to have a buyer as well as a seller. I think that if North Korea is willing and able to open up what has been, in my view, the most hermetically sealed society on the face of the earth, I view that as something that is in America's and our allies' interests, not a favor to North Korea.

So I think that Congress should be careful in one respect, that any congressional efforts to alter or undo this agreement I think are dangerous and counter productive to our interests in the sense that I think it would unravel. I think it would give the North Koreans an excuse to walk away and renege on their commitments. I think, as I have been both a minor participant and an observer of this policy over the last 4 years, the points at which we have been successful have been when we have taken away North Korea's excuses. I think that is important to keep in mind.

I think what is required, where Congress can play a very important role, is helping the administration shape a larger strategy to deal with these other issues. It is not conscionable, in my view, that you have South Korean conglomerates rushing into North Korea, and Japanese firms throwing money in which, again, is not part of the agreement. All the agreement focuses on is energy. But it is implicit, a broader engagement strategy is implicit, in this agreement. And if you have that, it seems to me, before you get very far down that road, how do you justify giving them technology transfer, giving them the kind of economic benefits that are, in my view, implied without reducing the conventional military threat.

There has to be some connection.

Let me just conclude by saying there are a number of things that North Korea wants. They want a peace treaty. They want substantial economic aid, trade, investment, and so on. I think these things can be connected to a phased process where we can start to push them. There are provisions for this in the North-South 1991 agreements for a military commission. I think there is a strong basis in my mind for a CFE type conventional arms reduction process. And if North Korea is serious, and, again, has the nuclear agreement as a test of its intentions, I think what I am proposing would also be a test of its larger intentions. If they are serious about opening up and modernizing their economy and trying to buy themselves time or survivability, then it seems to me it is in their interest to reduce a military burden that is something like 25 percent or so of their Gross National Product.

So there is a logical connection here which needs to be made. I would urge that we be more holistic as we view this nuclear agreement. Thank you.

[The prepared statement of Mr. Manning follows:]

PREPARED STATEMENT OF ROBERT A. MANNING

#### FROM THE NUCLEAR ACCORD TO A STRATEGY FOR THE ENDGAME

Senator Robb, members of the committee, I am grateful for this opportunity to testify on the October 21, 1994 "Agreed Framework" negotiated between the United

States and North Korea to resolve the nuclear issue on the Korean Peninsula. This accord, designed to halt the North Korean nuclear weapons program affects vital American national interests in perhaps the most dangerous tinderbox in the world, the heavily-armed and divided Korean Peninsula. Any assessment of this accord must place it in the larger context of U.S. policy towards the Korean Peninsula of which it is but one element, and in which the stakes are extremely high both in terms of consequences for stability in Northeast Asia and for the nonproliferation system.

The starting point must be a recognition that there is no solution that will result in 100 percent certainty. As was dramatized by the case of Iraq, we don't know what we don't know. Short of a war and occupation even the best verification procedures will have a margin of error. At the same time, we must be clear about what North Korean actions will be considered deal breakers. The measure of any policy is its ability to result in benefits to American interests beyond its costs. In regard to this nuclear agreement, and indeed, larger policy issues towards North Korea, one must also recognize that there are some problems for which there are no good policy answers, only least bad choices, particularly in the realm of nuclear proliferation. The North Korean nuclear weapons program is one of them.

Secondly, it would be a grave mistake to focus on the nuclear issue solely as a matter of proliferation. While there is an important global proliferation aspect to the problem, from a policy perspective, it must at the same time be viewed as part of a larger problem of security on the Korean Peninsula, in Northeast Asia, and more broadly, of the reunification of Korea. In short, the agreement itself is at best, only a beginning, not the culmination of a Korea policy. For North Korea it may be an admission ticket to the community of nations. For the international community, it is a bargain aimed at enhancing the prospects for managing a peaceful reunification of Korea while eliminating the threat of nuclear proliferation.

### **The Nuclear Accord**

Let me first examine the October 21st "agreed framework." This accord is in essence, a reciprocal trust and confidence-building process, which, *if* successfully implemented would establish some bona fides on the part of Pyongyang, end its nuclear weapons program, set new standards of nonproliferation norms, and open the possibility of a peaceful reunification process. Admittedly, this is a very big *if* which I would put in bold, neon lights.

The accord has, however, produced some immediate results. The International Atomic Energy Agency (IAEA) has verified that North Korean nuclear program is now frozen and shut down: the reprocessing facility is sealed; its 5mgwt reactor at Yongbyon reactor stopped; the fuel rods from the defueling of that reactor are under IAEA monitoring; construction of two other known reactors, 50mgwt and 200mgwt has ceased; the IAEA is on the ground and monitoring all declared nuclear facilities. North Korea has agreed to dismantle all these facilities in a phased manner upon completion of the LWR's.

The price of this cooperation is a U.S. commitment to arrange for an international consortium, financed largely by South Korea and Japan, to construct two light water reactors (LWR's) to generate approximately 2000 MW(e) of electricity by a target date of 2003. In addition, the U.S. will also make arrangements to supply heavy oil, beginning in January 1995, 50,000 tons the first year, 100,000 the second year, and then 500,000 tons annually to compensate the DPRK for energy production lost as a consequence of abandoning its gas graphite reactors. Moreover, the U.S. is committed to "reduce barriers to trade and investment" within three months, and exchange liaison offices. The U.S. will also provide security assurances against the threat or use of nuclear weapons against North Korea.

In addition, North Korea has agreed to clarify its nuclear past on a deferred basis. According to the agreement, "before delivery of key nuclear components, the DPRK will come into full compliance" with its IAEA safeguards obligations, allowing the IAEA to take "all steps deemed necessary by the IAEA" to determine its past nuclear activities—how much—plutonium it has acquired. Thus, for some five years, North Korea will remain technically out of compliance with the IAEA, and the international community will continue to live with ambiguity about its nuclear capabilities. During this period all the elements of North Korea's nuclear program will remain in place. It should be noted that the ability of the executive branch to conclude a US-DPRK Nuclear Cooperation Agreement as mentioned in the Agreed Framework is precluded legislatively until North Korea is in compliance with full-scope IAEA safeguards.

Beyond the U.S.-North Korean dimension of the agreement, Pyongyang has pledged to "consistently take steps" to implement the North-South Joint Declaration on the Denuclearization of the Korean Peninsula and to engage in North-South dia-

logue. But the accord provides no direct conditionality between implementation of the agreed framework and active North-South reconciliation as set out in the December 1991 "Agreement on Reconciliation, Nonaggression, Exchanges and Cooperation between the South and the North." It should be noted that this set of agreements is not at all mentioned in the U.S.-DPRK agreed framework. Pyongyang is not obliged to do more than talk to Seoul.

### Is The Deal Worth It?

Is this a good deal for the United States? If shutting down North Korean nuclear program and fostering a process that will, if implemented, lead to the dismantlement of the entire strategic nuclear weapons program is a significant policy goal, then this agreement is an important, if tenuous step in this direction. But North Korea's horrendous track record, not only in lying and cheating about its nuclear activities, but its flaunting of international norms on missiles, chemical weapons, and in the past, on terrorism, raise serious questions about the North as an interlocutor. This is mitigated, however, by the "mistrust, but verify" structure of the agreed framework under which they will be rewarded only as they demonstrate cooperation at each step along the road to implementation.

While the benefits of the agreed framework to both sides are tangible and immediate, they are also easily reversible: the U.S. could rapidly halt oil shipments, reimpose a trade embargo and close down a liaison office; similarly, North Korea could reprocess the fuel rods, resume construction on the two larger reactors, refuel the 5 mgwt reactor and reprocess on short notice. Indeed, Pyongyang could do all these things under IAEA verification. But should they renege on their commitments, the long term benefits provided for in the agreement-nuclear power, a U.S. embassy, and implicitly, foreign economic engagement would all evaporate and confrontation ensue. Moreover, an economy which has seen negative growth of -5 percent annually for each of the past four years, would forfeit the prospect of foreign economic involvement which many members of the North Korean political elite appear to recognize is essential if it is to have any future.

Apart from the reversibility of the deal, there are a host of other shortcomings. The world must live with the possibility that the DPRK has a nuclear capability for an extended period. There is no conditionality to concrete progress in North-South dialogue. The idea of a more intrusive North-South challenge inspection regime embodied in the North-South Denuclearization Accord appears dead. There is no explicit linkage to other security issues of concern: its' ballistic missile program; its chemical weapons program; a possible biological weapons program. And most importantly, there is no direct connection between the Agreed Framework and the North Korean conventional military threat which remains ominous.

Most troubling is not the substance of the agreed framework itself, but the apparent lack of a larger strategy for reducing the conflict on the Korean Peninsula and fostering a genuine inter-Korean reconciliation process. The effect if not the intent of the agreement is a strategic choice: the U.S. has chosen to avoid confrontation, a path likely to result in armed conflict, and opted for a cooperative, or "bail-out" strategy. South Korea, Japan, and China have all publicly endorsed this approach.

But in my view, embarking on a fullblown course of aid, trade and investment without reducing the North Korean conventional threat of a one million man army, with two-thirds deployed with 8000 artillery tubes within 100 kms of the DMZ is a dangerous folly that is simply not justifiable. Implicit in the Agreed Framework is a North Korean willingness pursue at least a limited opening of its autarchic economy, and a new pattern of expanding economic engagement on the part of South Korea and Japan, who are projected to be the key funders of the Korean energy Development Organization (KEDO) which will provide the LWRs to North Korea. Already, the Kim Young Sam administration in Seoul has altered its policy, and announced it will allow Korean business more access and direct investment in North Korea. A vituperative response to President Kim by North Korea was mistakenly reported in the Western press as a rejection of economic cooperation, but close examination of Pyongyang's response reveals only hostility to the provocative style of President Kim, not a rejection of economic cooperation with Seoul.

But such a course runs the risk of merely strengthening an enfeebled regime and increasing the threat to South Korea and to U.S. forces stationed there unless the political/economic engagement option is linked to a strategy for reducing the conventional military threat as part of the North-South reconciliation process as I will outline below. An initial phase of economic activity is not unreasonable, but before it gains momentum to the point where substantial technology transfer and long-term direct investment occur, there should be a reduction of the North Korean conventional military threat. As does the nuclear accord, such a strategy would test North Korean intentions: if Pyongyang is serious about opening up and joining the global



economy, it is in its own interest to reduce its perceived military threat and its enormous military burden, some 25 percent or more of its GDP.

By the same token, one cannot ignore critics of the agreed framework who charge or imply that either this is a fatally flawed agreement with ominous implications for the nonproliferation regime or that North Korea is a rogue state that should, in effect, be isolated and squeezed until it implodes unless it immediately satisfies all of our policy concerns. Those who define Pyongyang as too odious to deal with are guilty of what I have called "the toughness fallacy." Those demanding either instant gratification of all policy concerns (an unrealistic demand certain to be rejected) or an overt course of confrontation must follow their own logic to its conclusion: such a course requires being prepared to fight and win a second Korean war as it would make war a relatively rationale choice for a Pyongyang regime for whom such a policy could easily be construed as a threat to its existence. Just because Pyongyang may be paranoid does not mean it doesn't have enemies.

This would be true even if the U.S. intent of say, a pre-emptive strike, some have proposed, was merely to eliminate its known reprocessing capability. It should be recalled that Israel's remarkably precise bombing of Iraq's Osirak reactor, did not end Baghdad's nuclear weapons program. The history of dealing with North Korea, particularly over the past five years, suggests that Pyongyang's least likely response when pressed into a corner is to make the concessions demanded; the most likely response is to lash out in a paroxysm of national pride.

### Flawed Nonproliferation Theology

Another school of critics opposes the agreed framework on the grounds that it sets a dangerous precedent by rewarding violations of the Nuclear Non-Proliferation Treaty (NPT), and thus will encourage other potential proliferators such as Iran. While the NPT is an important instrument codifying nonproliferation norms, in the real world each case of proliferation must be, and has been, addressed or ignored on its own merits and within the limits of political-military realities. All proliferation has not been treated as equal. The international community did not sanction South Africa or Israel as they attained opaque nuclear status, nor have India or Pakistan been dealt with as pariah states. While it is true that these proliferators were not party to the NPT, their undeclared nuclear capabilities are no less a reality. Moreover, U.S. financial inducements and security assurances to Ukraine and Kazakhstan to gain their respective compliance to with non-nuclear norms did not go unnoticed in Pyongyang.

In point of fact, the North Korean case may be unique in several respects. The likelihood of export of nuclear material or technology to other rogue states, particularly in the Middle East, the fears of triggering a nuclear arms race in Northeast Asia, the fact of a heavily military standoff across the Demilitarized Zone (DMZ) just a stones throw from the suburbs of Greater Seoul, and the reality of 37,000 U.S. troops in South Korea are all factors which must be weighed addressing the challenge of North Korea's nuclear program.

Nonetheless, there is no doubt that the Agreed Framework, an accord reached on the eve of the NPT Review conference scheduled to occur next April, will have a significant impact on the nonproliferation system, albeit one that is mixed. On the plus side of the ledger, trading in its gas-graphite reactors, both operational and planned, shutting down its reprocessing facilities, and agreeing not to reprocess the 8000 fuel rods from the defueled reactor all transcend current nonproliferation norms. Under the NPT Pyongyang could acquire the dozens of bombs worth of plutonium that the two reactors under construction would have produced, and it could also legally complete its reprocessing plant and separate the plutonium from the fuel rods (which could produce some four to five bombs worth of plutonium) under IAEA inspection.

Similarly, the controversial "special inspection" of the two undeclared suspected nuclear waste sites is not standard IAEA procedure. While the IAEA has the statutory authority to request inspections of undeclared nuclear facilities, only on rare occasions has it done so. It took 500,000 U.S. troops and military defeat to obtain more intrusive inspections in the case of Iraq. While it is deeply frustrating and unfortunate that the IAEA's ability to obtain compliance by North Korea of the full scope of its past nuclear activities will be deferred for five or more years under the agreed framework, this also could arguably be construed as a small step forward in terms of proliferation norms. Moreover, the administration should treat the time-frame envisioned in the Agreed Framework as a ceiling not a floor: if the nuclear accord serves as a catalyst for the creation of a climate of cooperation in economic and other spheres, the administration should quietly pursue the possibility of Pyongyang permitting the IAEA to clear up its past behavior sooner.

It is not possible to know if a better deal was possible without obtaining access to the negotiating record and to the secret side letter spelling out in more detail the precise agreements and implementation understandings outlined in sometimes vague language in the agreed framework. As one who has been involved in this issue as both outside analyst and a minor participant in the Bush administration's initiatives to solve this problem, I am well aware of the difficulties of managing the nuclear issue under any circumstances. The idea of a diplomatic opening to North Korea began during the Reagan administration in 1988. The effort to end North Korea's nuclear weapons program began during the previous administration. The broad concept behind current policy—allowing the DPRK to trade its nuclear program for economic and political engagement with South Korea, the U.S. and wider international community—was inherited from the Bush administration. It must be said that the general idea of current policy (if not the details) is one more of continuity with the previous administration's than change.

But the history of the Clinton administration's handling of the North Korean issue does not inspire confidence. Over some seventeen months of diplomacy, we witnessed a sad spectacle of mixed signals sent in contradictory statements by senior officials, inept policy management as the administration lurched to respond tactically to one DPRK provocation to the next, and misplaced priorities resulting in a lack of focus. To wit: while the confrontation over the IAEA request to inspect the two undeclared, suspected nuclear waste sites had been building since the fall of 1992, *not until June 1993, three months after North Korea threatened to become the first member state ever to withdraw from the NPT was there any policy-level contact between the U.S. and North Korea.* Until last August, U.S. policy was incremental and reactive with no larger strategy visible: persuading North Korea to stay in the NPT; to allow continuity of IAEA safeguards; to allow IAEA inspectors to remain in North Korea.

The contradictions in the administration's policy reached their apex last June. After North Korea removed its reactor core without IAEA monitoring in April, the U.S. launched a campaign to mobilize the international community to apply UN Security Council sanctions against Pyongyang. It must be noted that this drive for sanctions occurred *before* any package deal had been offered to North Korea. The U.S. had not answered in precise terms the one question to which Pyongyang deserved a clear and exact answer: if we trade in our nuclear program, what exactly do we get for it? The administration spent considerable political capital with our key strategic allies, Japan and South Korea in the process.

Yet at the very moment the administration was about to impose sanctions, a private U.S. citizen, former President Jimmy Carter was singlehandedly reversing U.S. policy. A substantial loss of the administration's credibility both at home and abroad was the price for altering a course likely to lead to conflict, perhaps unnecessarily.

### A Strategy for the Endgame

The point of this brief analysis of the evolution of U.S. policy is to glean lessons for the future. On balance, the agreed framework is worth pursuing. But it is unlikely to succeed, or advance U.S. national interests unless it is subordinated to a more comprehensive policy towards the Korean Peninsula and Northeast Asia. As discussed above, the effect of the nuclear accord is strategic choice to "bail out" North Korea, to seek a "soft landing" and a gradual, peaceful reunification process. But there is no indication of a larger strategy to achieve this. Indeed, there is a danger, as previously discussed, that absent a framework for addressing other security and political issues of concern, particularly the conventional military threat, this policy could have the unintended consequence of bolstering an adversary.

What follows is a much-needed notional "roadmap" of next steps for the endgame:

- 1. Congress should insist on strict enforcement of the agreed framework. If North Korea seeks to revise the agreement, the administration should not reopen the talks. A deal's a deal. Certain North Korean behaviors should be considered "dealbreakers" leading back to UN sanctions: if it reprocesses the fuel rods; if it refuses to cooperate fully with IAEA monitoring of all declared facilities; if it refuels its 5 mgwt reactor; if it reopens its reprocessing facility; if it resumes construction of its two new reactors; if it is revealed to have more plutonium than declared and refuses to place such material under IAEA safeguards; if it is revealed to have nuclear weapons and does not dismantle them and place all nuclear material under IAEA safeguards.
- 2. In consultation first with South Korea and then with Japan, the U.S. must devise a trilateral strategy based on a consensus that movement on economic and political engagement with Pyongyang should be phased to coincide with movement on other agreed issues of concern, with priority given to conventional arms reductions, ballistic missile exports, and chemical weapons. The center-

piece of this process should be active North-South reconciliation. The administration should explore with our allies the creation of a Korean Reconstruction fund as a window of the World Bank as part of the incentive structure for North Korea.

- 3. Limit Korean, Japanese and U.S. business contacts to an initial phase of increased trade and investment in light assembly industry. A second phase of large-scale aid and direct investment, expanded U.S. and Japanese movement towards normalization of relations, admission to multilateral lending agencies such as the IMF World Bank and Asian Development Bank, and discussion of turning the UN armistice into a peace treaty should be linked to DPRK adherence to the Missile Technology control Regime, signing the Chemical Weapons convention (CWC)—here the U.S. could offer to help dispose of any chemical weapons possessed by Pyongyang—and active negotiations on confidence-building measures such as a retreat of forces from the DMZ and a CFE-like conventional force reduction accord within the Military Commission provided for in the 1991 framework for North-South reconciliation and cooperation.
- 4. As part of the initial phase, the U.S. should move quickly to exchange liaison offices with North Korea, lift or reduce the trade embargo against North Korea, offer technical business help, perhaps mobilizing Korean-American volunteers, and offer telecommunications links, including a CNN downlink. Any steps which open up the most hermetically sealed society on Earth is in the U.S. interest, it is not a concession or favor to North Korea.
- 5. Full normalization of U.S.-DPRK relations should be carefully phased with North Korean cooperation on a prioritized set of issues of concern: missiles, chemical weapons, conventional force reductions or a pullback 100 miles from the DMZ, and a regularized process to handle MIA's from the Korean War ending the current ghastly extortion.
- 6. Establish a six-party Northeast Asia political/security framework with the two Korea, the U.S., Japan, China and Russia, as Seoul has proposed, initially to: (a) explore ways to reduce tensions and facilitate reconciliation (e.g. security assurance such as No First Use of nuclear weapons or weapons of mass destruction; (b) endorse/guarantee a peace treaty and/or a denuclearized peninsula; (c) discuss creation of an Asian counterpart to EURATOM to expand regional nuclear cooperation; and (d) discuss development of the Tumen River Basin and the Sea of Japan. The agenda for such a framework must be carefully designed to reflect consensus among all six parties if it is to be constructive. Parties should meet regularly at the Assistant Secretary level.

## Conclusion

Such a roadmap offers the best prospect of creating the possibility of a peaceful reconciliation process, re-establishing the confidence and credibility of our allies, and importantly, putting North-South reconciliation at the center of U.S. policy towards the Korean Peninsula. Such an approach also would continue to test North Korean intentions and provide an incentive structure in the interests of all concerned parties. The agreed framework for managing the nuclear issue would then be but on, albeit very important, component of this larger regional policy.

Since the October 21st agreement, Pyongyang has complied fully with its commitments. The U.S. should be careful to reciprocate. North Korea's fixation in dealing with the U.S. has both a strategic and tactical dimension. Tactically, North Korea uses its dialogue with the U.S. to gain leverage over South Korea. Strategically, since the demise of the Soviet Union and China's normalization of relations with South Korea, Kim Il Sung, and apparently the successor regime, views an opening to the U.S. as important to its security. This has been evident in recent years in North Korean comments to visiting private U.S. citizens, in the January 1992 meeting between then Under-Secretary Arnold Kantor and his Korean interlocutor, Ki Young Sun, and in Kim Il Sung's meetings with former President Carter. The new regime appears to view its agreement with the U.S. fledgling ties as important to its political legitimacy.

Congressional skepticism about the nuclear accord is understandable. But congressional action to alter or undo the agreement would be counterproductive to American and allied interests. Winston Churchill once remarked that Americans, given our ingenuity and resourcefulness, would when faced with a difficult situation, invariably make the right choice \* \* \* after exhausting all other alternatives. This is the story of the administration's Korea policy. The nuclear accord appears to reflect a learning curve. Congressional action to alter or undo the agreement would be counterproductive to allied and U.S. interests. Instead, Congress should work with the administration to build on it, strictly enforce it, and to fashion a consensus for a comprehensive approach to the difficult problem of the Korean Peninsula of

which the nuclear issue is only one aspect. Thank you for this opportunity to present my views. I welcome your questions.

Senator ROBB. Thank you, Mr. Manning.

Next we will hear from Mr. Henry Sokolski. He is a veteran of the Senate, I guess from about 10 years ago, with one of our now retired colleagues, Senator Gordon Humphrey. He is the author of a recent op-ed piece that is directly on point. He is a nonproliferation specialist.

Mr. Sokolski, we are delighted to have you with us and are delighted to hear from you.

**STATEMENT OF HENRY SOKOLSKI, EXECUTIVE DIRECTOR,  
THE NONPROLIFERATION POLICY EDUCATION CENTER,  
WASHINGTON, DC**

Mr. SOKOLSKI. Thank you. I cannot resist. I have to also mention a little known Senator from Indiana that I worked for for 5 years. I hope he is doing well. I heard he was in the hospital.

Senator ROBB. I apologize. That was not on my little crib sheet here in terms of background. I had asked for one or two relevant statements. To the best of my knowledge, he is. I have heard no contrary information.

Mr. SOKOLSKI. OK. The other add I want to make is I do have a job. I am the Director of an organization known as the Nonproliferation Policy Education Center that has just been opened up. It is there to teach teachers how to teach the topic as well as work with policy makers and the press.

In any case, what I would like to talk about today is something that I was not planning to talk about as much but will because of Ambassador Gallucci's very interesting testimony—and, by the way, I think that holding this hearing was an immense public service. It is the most interesting hearing I have ever been to, and I have been to several hundred. Clearly, we have learned a great deal just from listening to the questions raised by all of the Members, including yourself.

Senator ROBB. As you are probably aware, it was not an easy one to hold and there was a certain amount of resistance from many quarters. But I thank you for your comment.

Mr. SOKOLSKI. Thank you. Your staff, yourself, and Senator Murkowski did good work.

Now, to what it is that really is dramatic to me that I think deserves your attention and that is that this agreement is a political understanding that is not legally binding. This is wild.

You know, I can remember working on the Hill when the question would have been is the President trying to sneak this or that by in an Executive Agreement. This understanding is a new thing though. This is the kinder, friendlier world where you don't even have an Executive Agreement. You don't have anything that is legally binding.

Now why is that interesting? It is because the administration needs money, they need waivers of law, they need even agreements from you. They are betting your money—our money. Therefore, you need to keep in mind that you, the Senate, have certain treaty making duties and authorities, and that our government has certain formalies about making obligations toward other countries,

and if not requirements for a treaty, then, at least for agreements that are legally binding.

Now I am going to go with this a little bit, though, because it is a new world. As best I can understand it, a political agreement or understanding probably depends on very big political commitments.

Now what is interesting as we listened to the testimony is that the three countries, whose participation is really critical to the success of the accord are not making that political commitment. You've got a letter from the President of the United States to, I guess, the "premier," the fellow who is supposed to be running North Korea and that's it. You do not have Japan or South Korea coming forward with similar kinds of letters to us, much less to the head of North Korea.

Now, I think I can understand why. But this, from here on out, is informed speculation. But I assume that is the reason why you wanted me here.

Senator ROBB. That's right.

Mr. SOKOLSKI. First, the key provisions of this accord apparently are secret, because those are the provisions that have to do with what the Koreans have to do and what we are going to do. But look. If it is a political understanding and we are democracies, that is a bit queer. It really is.

You know, I heard one rumor that the reason it was being kept secret was because well, it would upset the moderates in the Government of Korea. That is even queerer still if that is true.

OK. You need to really think hard about letting the country that you represent get into a political agreement that depends on a secret codicil when you are a democracy. Certainly, we did not have that with past arms control agreements once it came to treaty-making, that is to say when it came to the Senate.

In addition, of course, there is the question of who is running North Korea and whose commitments or word carries weight. It is a serious question which you raised. So that is probably one of the reasons why no one else has signed a letter like President Clinton did.

But, in addition, to make this accord work, Japan and South Korea probably need to go to their legislature. They are going to have to get money. They are going to probably have to get waivers of law, because I don't think we are the only ones who worry about having agreements with dangerous countries like North Korea and have written it into law. I suspect that is true certainly for South Korea.

So, then, they probably think well, gee, do we want to commit ourselves if we have to commit our legislatures too. Probably not.

To do this they probably need a treaty or an Executive Agreement because they have not figured out that you can do this by a political agreement. So that may be the reason that they won't go forward with a letter.

Then you've got the problem that the public provisions of the accord are incredibly vague. In the back of the testimony, which I hope I can submit along with some attachments for the record—

Senator ROBB. Without objection, your entire testimony will be included in the record.

Mr. SOKOLSKI. If I could also include these attachments, I would appreciate it.

Senator ROBB. Indeed. The attachments will be included as well.

Mr. SOKOLSKI. Thank you.

The last page is a kind of elevator brief on what the agreement says versus what this ACDA press release says. The ACDA press release says all sorts of things that the text does not say. It could be that it is covered in the secret agreement. It may not be. But boy, you really want to get that cleared up, and lots more, which was discussed in the testimony. I think they know that, the Japanese and the South Koreans.

Then there is the substance which you have heard so much about today, and on which I thought the questions from the dias were really quite good. You have excellent staff. This was a good hearing.

Start with the oil. If you think about the reactors that are not completed, and as I think Gary pointed out may never get completed, which is the bogeyman that is driving this train, the administration keeps talking about the three reactors but there is only one reactor that is running. It is not clear that the other two would ever have been completed. That is really open to question because they didn't have the money. Their problems there are enormous. There are scaling problems.

But, in any case, that oil is not just eight times more than what North Korea's nuclear plants are generating. Senator Murkowski kind of stumbled there, but he was on to something. It is 50 times more than the electrical output that is currently being put out because it is rated as if all three of those reactors were working, and they are not.

Not only that, but you heard about the reactors. I have to point out one other thing. It is particularly disturbing that the reactors, two reactors, not only produce eight times as much electricity as all three of the reactors would have if they would come on line and two times as much plutonium, but that even one of these things cannot fit on the current grid.

Now when you put a one gigawatt machine on a grid that is not built to take it, do you know what happens? You knock the grid out. So if they are operating these things, it is not going to be for electricity generation. That is my hunch, because they will have to make a whole, brand new grid. And talk about money? \$4 billion is peanuts.

So they are probably looking at us and we say well, you know, they say they want them, we don't know why they want them. Maybe that too is the reason why you don't have letters from the Japanese and the South Koreans. Maybe they are looking at this. Maybe they are saying well, they will never build the reactors.

In addition, you've got the question of precedent. Now we have heard of the Iranians, we have heard probably also of the Iraqis. And, you can hear the Pakistani and Ukrainian opposition say, let's not give up our nuclear programs up unless we get what the North Koreans got. But what you are not hearing about is that a lot of European nations and smaller nations are saying we're not going to give you an indefinite extension of the NPT, and, by the way, it doesn't look like we are going to get it. Do you know why?

They are saying we're tired of the United States pushing us around telling us to do things for nonproliferation and then going out and making a deal with the devil.

So it cannot be argued that this accord does not have precedential impact on nonproliferation. It clear does, and in lots of ways that are not yet really fully public.

Now in addition, the South Koreans and the Japanese, went to the mat—they went to the mat for the denuclearization agreement. We had to lead them along on that, and then the South Koreans decided to take the lead. We tried to get those talks going in the agreement. Did you know we tried to set a date? Guess what? The North Koreans refused. Well, there is no reason to believe those talks are going to happen unless you condition this on them in the beginning. I was very happy to hear you talk about that because, unless the North Koreans and the South Koreans resolve this question through that denuclearization agreement, you are never going to resolve it through this accord. You have to have the South Koreans believing the problem is solved. It doesn't matter what we think.

That denuclearization agreement was the way to do it. And until that agreement not only gets started, but is concluded, you are nowhere near the end of the game.

Now it seems to me, in addition, unification has been made a lot tougher. One of the things you have got to watch now is whether or not the Japanese are going to make peace with North Korea because, if they do, that is \$10 billion more in reparations. And that is not just for reactors; it could be for anything.

That does not make unification come sooner. That makes the current, tough-nut regime in North Korea last longer.

Now there are risks of noncompliance. There is a covert program, perhaps. There is some reference to that in the testimony. But then, I think a very important point is this. I think the Asians may well look at this problem and say you know, the Americans have this peculiar preoccupation with the difference between, two or ten weapons on the one hand and 20. The Asians are under the nuclear gun diplomatically now, already, and this agreement does nothing—nothing—to address that, except maybe, if we are lucky, down the road, as Gary Milhollin pointed out.

And so they look at this agreement and see, this is not necessarily what they are concerned with.

Now, finally, the Executive wants you to come along and open the new road to this new kind of political understanding. They want you probably to spend some money next year. They apparently wanted to reprogram things so that you could not get to it initially. And they are going to make all kinds of claims about how you've really got to give us this because, if you don't, this, this, and this will happen.

I say hang on to your wallet. I say you can demand that this accord be made legally binding, that you need to clarify what you are paying for, because it is our money and we should not bet on this accord landing on its feet.

One final remark. At the height of the imperial presidency, as we knew it, Nixon tried to get a Spanish base agreement passed in Congress that had all kinds of mutual security agreement stuff in

it snuck in to try to sell Spain on continuing the base agreement. Congress said wait a minute. What they did was ask Nixon and Ford to renegotiate the agreement and send it back as a treaty.

Guess what? At the height of the imperial presidency, that is exactly what Presidents Nixon and Ford did.

Now this is not an Executive Agreement, but boy it had better be something that is legally binding or you are not going to get your money's worth and a lot of bad things are going to happen down the line, eventually, and you will have to pick up the pieces along with the rest of us.

That concludes my presentation.

[The prepared statement of Mr. Sokolski and the supporting documents follow:]

#### PREPARED STATEMENT OF HENRY SOKOLSKI

#### THE KOREAN ACCORD: WORRIES AND WHAT TO DO

##### OVERVIEW

Mr. Chairman, I want to thank you for inviting me here today to testify on the implications of the U.S.-North Korea Nuclear Agreement. By holding this hearing, the Subcommittee has done a genuine service. This agreement's ramifications are anything but simple and the sooner we realize it, the sooner its more troubling aspects can be addressed.

There are three key problems with the agreement:

1. it sets an incredibly bad nonproliferation precedent by requiring the U.S. to give North Korea substantial aid up front to get it to comply five or ten years from now with nonproliferation pledges it has never adhered to;
2. in order to get North Korea to end its declared nuclear program sometime in the distant future, Congress must first approve millions in spending and the waiving of numerous laws even though the specifics of what the agreement requires of North Korea are vague;
3. by normalizing relations with the U.S. before North-South talks on unification and denuclearization have begun and encouraging the Japanese and South Koreans to invest in North Korea, the agreement forestalls Korean unification and encourages a potentially unhealthy competition between South Korea and Japan to indulge North Korea.

Although the agreement is flawed, the Senate will do best in any effort to try to fix it if:

1. it treats the agreement as if it was a treaty and demands that its terms be clarified with North Korea before allowing money to be spent to implement it;
2. it resists Executive appeals to waive or bend the requirements of existing law or to get U.S. allies or friends to violate their provisions to implement the agreement;
3. it ties implementation of the agreement's diplomatic and trade provisions to getting the North-South Denuclearization and unification talks started and to North Korea opening up to the West more generally and;
4. it considers separate, additional, discriminate measures to stigmatize North Korea's continued violation of the Nuclear Nonproliferation Treaty (NPT).

##### WHAT'S WRONG

*1. Although North Korea is still in violation of nuclear nonproliferation pledges it made in 1985, the agreement sets the dubious precedent of requiring the U.S. and its allies to provide North Korea with billions in aid as a quid pro quo for getting North Korea to comply fully with its nonproliferation pledges five or ten years from now.*

Administration officials dismiss this complaint by insisting that the U.S. is not bribing North Korea but compensating it for the energy production it will forgo by freezing and eventually dismantling its nuclear plants. They further point out that without such compensation we could not get North Korea to agree to halt their production of nuclear weapons useable plutonium since the Nuclear Nonproliferation Treaty (NPT) can be interpreted as giving nations a right to such activities so long



as they are claimed to be "peaceful." As for the precedent the agreement might set for future North Korea, such as Iran, the Administration insists that North Korea is a special case (the only country that might directly engage U.S. troops, a nation that is isolated and well armed, etc.). Finally, the Administration argues that without this agreement, the North Koreans would be free to continue to make nuclear weapons material. Indeed, they even suggest that failure to implement the agreement might lead to war.

These arguments are tenuous. First, in offering North Korea oil and two light water reactors (LWRs), the U.S. is giving Pyongyang many times over the energy production it might forego. And while it is true that some nonproliferation experts now argue that the NPT allows North Korea to stockpile plutonium for "peaceful" purposes, some of these same experts (including the current Director of the International Atomic Energy Agency or IAEA) were more correct in 1992 and 1993 when they privately argued that North Korea had no "peaceful" reason to stockpile such materials and, thus, was in violation of the NPT.

The Korea agreement, in any case, doesn't require North Korea to surrender any of its separated plutonium and would only require them to dismantle their existing, declared<sup>1</sup> plutonium production facilities sometime before the two promised LWRs are completed (i.e., five to ten years from now.)

As for the precedent this agreement sets for future North Korea, the Administration may be denying it, but other nations such as Iran, Iraq, Ukraine, and Pakistan are already citing the agreement to justify better treatment and it's easy to see why. In the case of Iran, which the International Atomic Energy Agency (IAEA) has repeatedly found in full compliance with IAEA safeguards, the U.S. has rightly been trying to block European, Russian and Chinese sales of light water reactors. Looking at the Korean nuclear agreement that the U.S. just signed, though, the Iranians are asking why. The North Koreans, after all, are still in violation of the NPT yet the U.S. has promised them two LWRs for free. Similarly, Iraq, which IAEA inspectors claim has opened itself up to inspections, has asked why, in light of the Korea agreement, the U.S. is still punishing Iraq. Finally, there are political opposition groups in Pakistan and Ukraine that are on record urging their government not to forgo nuclear weapons or their development without first receiving compensation of the sort North Korea has been promised.

Administration officials, of course, deny there is any precedent being set and that, in any case, the agreement is better than war or North Korea making more bomb materials. The assumption here, of course, is that without this agreement there would be war or more bomb making. This is speculative, at best.

Although the U.S. military considered bombing North Korea's nuclear facilities, it concluded it would not be able to hit all of what it needed to and would start a war. That North Korea would go to war over the agreement is even less credible. Certainly, to argue that we can now deal with North Korea as a "normal" state and engage in trade and complex nuclear high-technology transfers with it but that if this commerce isn't conducted precisely the way they want it, they will turn Seoul into a sea of fire is contradictory at the very least.

As for preventing North Korea from making more weapons material, it's still unclear if the agreement itself will succeed in preventing this. Under the agreement, North Korea can keep all of its current production facilities in a "frozen" or "sealed" state up until the completion of the two LWRs. Only then does the agreement require North Korea to have these facilities completely dismantled, which leaves open the possibility that North Korea could break out of the agreement any time before this with its production facilities still in tact. Given North Korea's history of non-compliance with the NPT and the militant character of its leadership, this is no small probability.

All this suggests that there are other possible agreements, including better ones than the one that was reached.

*2. What the U.S. has offered North Korea in the way of direct assistance—oil and reactors—far exceeds what North Korea will forgo in closing down the production reactors it is operating or has under construction.*

Certainly, the oil the U.S. has promised North Korea will more than substitute for the electricity generated by its 5MWe reactor (and will free up thousands of tons of North Korean oil stocks for possible military uses). Meanwhile, the two promised LWRs will produce eight times as much electricity and nearly two times as much

<sup>1</sup>The agreement is silent on whether or not North Korea can build new nuclear facilities. Nor does it address the probability that North Korea has covert facilities. For a compilation of reports on its undeclared facilities see Joseph S. Bermudez Jr., "North Korea's Nuclear Infrastructure," *Jane's Intelligence Review*, February 1994, pp. 74-79.

weapons useable plutonium as all three of the reactors North Korea planned to have operating sometime after the year 2000.

As one expert put it, the U.S. offer to transfer LWRs to North Korea in return for North Korea freezing its graphite-moderate reactor program is a bit like the police department buying up small handguns from criminals and offering them larger, albeit harder to conceal, shotguns (whose barrels, presumably, have not yet been sawn off) in exchange. In fact, some experts believe that North Korea doesn't actually need these reactors. Just one 1,000 MWe LWR, after all, is too large for North Korea's electrical grid (and the LWR itself needs a reliable grid for safety reasons, which North Korea lacks). The reason North Korea is demanding these machines, these experts argue, then, has less to do with energy requirements than it does with paving the way for a host of less ambitious deals.

*3. In return for North Korea eliminating its known capability to make more nuclear weapons materials some time in the future, the U.S. is obliged to waive U.S. legal restrictions (or to ask U.S. friends to violate them) on nuclear cooperation and other commerce with North Korea.*

Asian experts have even argued that the North Koreans may have chosen to focus on getting the U.S. to agree to transfer advanced light water reactors (LWRs) precisely because these were the most difficult things politically and technically the U.S. could agree to transfer. By this logic, the North Koreans sought the LWR agreement to serve as a negotiating "battering ram" to break down Western resistance other trade deals that previously were legally and politically forbidden.

Certainly, this much is clear: The legal and political barriers to U.S. nuclear and trade cooperation with North Korea are considerable.<sup>2</sup> Thus, one of the legal criteria for engaging in nuclear cooperation with another nation is that "IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within [its] territory." This is a difficulty since North Korea has still refused to let the IAEA inspect two suspect military waste sites and the agreement does not require North Korea to open them up for inspections for five or more years.

The Atomic Energy Act also requires the President to terminate nuclear cooperation with any nation that has, (1) "terminated or abrogated IAEA safeguards"; (2) "materially violated an IAEA safeguards agreement," or (3) "engaged in activities involving source or special nuclear material having direct significance for the manufacture or acquisition of nuclear explosive devices \* \* \*" Here, again, North Korea would clearly qualify.

Also, under U.S. law, no foreign assistance may be given to any Communist country unless the President certifies that such assistance is vital to U.S. security. Nor can the U.S. Export-Import Bank extend credit or guarantee any export to North Korea. Similarly, Exim Bank loans, Overseas Private Investment Corporation assistance and a whole host of other multinational financial institutions could not help implement the Korean accord without Congressional cooperation, Presidential waivers or a major change in the North Korean regime.

Untangling all of these legal difficulties will not be easy. As the U.S. tries to get around its own laws, there will be delays and, in turn, an inclination to compensate North Korea for what's being held up. One way to do this would be to offer North Korea legally less sensitive trade deals as the agreement itself encourages (see section II. 1 "both sides will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions.").

Another would be to encourage our allies to engage in the various types of commerce with North Korea that U.S. law discourages. Strictly speaking this would be legal. But it would certainly violate the intent of U.S. law and undermine the U.S.'s long-standing effort to set a model of behavior for other nations in dealing with dangerous states like North Korea.

*4. By normalizing relations with the U.S. before North-South talks on unification and denuclearization have begun and encouraging the Japanese and South Koreans to invest in North Korea, the agreement forestalls Korean unification and encourages a potentially unhealthy financial competition between South Korea and Japan to indulge North Korea.*

So far, the Japanese government has agreed with the U.S. and South Korea that making peace with North Korea should wait until the nuclear crisis has been "resolved." With the Korean nuclear agreement requiring that the U.S. coordinate \$3 billion to \$4 billion of South Korean and Japanese investment in oil and nuclear

<sup>2</sup> See Zachary Davis and Larry Nowels, "U.S.-North Korea Nuclear Agreement," *Memorandum* (Washington, DC: Congressional Research Service, October 24, 1994) and, Victor Gilinsky and William Manning, "A U.S.-Type Light Water Reactor for North Korea: The Legal Implications," *Working Paper #23* (Berkeley, CA: Nautilus Institute, December 1993).

high-technology for North Korea, though, Japan will want to follow through on its promise to pay North Korea approximately \$10 million in war reparations for World War II.

If this peace is made, South Korea will have difficulty sustaining North Korean interest in unification. It's only hope would be to compete with Japan by making investments of its own in the North. Such a competition, though, would put North Korea in the driver's seat in setting the conditions for investment from both countries.

It was in hopes of avoiding this that the U.S. previously backed South Korea's conclusion with North Korea of a Joint Declaration for a Non-Nuclear Korean Peninsula signed in December of 1991. Under the declaration, the two nations agreed to make Korea free of nuclear weapons, reprocessing plants and enrichment facilities through inspections, the details of which would be worked out in direct negotiations. Only when the nuclear question was resolved to the satisfaction of both the North and the South, would it be resolved.

Unfortunately, these talks have not gotten under way. The October 21 accord's failure to get North Korea to set a date for to start them is perhaps one of its greatest failings. Now the agreement opens the window for Japan and South Korea to support an independent and still dangerous North Korea.

#### WHY CONGRESS SHOULD CARE

*1. The Korean Nuclear Agreement's substantive importance and dependence on subsequent Congressional actions raises the political and Constitutional question of whether it should have been a treaty and whether the Senate's right to provide advice and consent has been violated.*

Some might reject raising this question on the basis that it would appear churlish, mean spirited, and disrespectful of the Presidency. It would be nice if this was so. Unfortunately, the question needs to be raised because it truly is a substantive problem. A brief look at what the State Department uses to guide it on such questions explains why.

The guidelines for deciding whether an accord should be concluded by treaty or executive agreement are set forth in a statement prepared by the Treaty Affairs Staff of the Department of State.<sup>3</sup> Three of the criteria are of special interest.

The first is when the agreement's subject matter and its treatment are "not wholly within the delegated powers of the Congress and not solely within the Constitutional authority of the President." With most agreements this is a matter about which honest men can disagree. In the case of the Korean nuclear agreement, however, its very first page [(Section I.1) third sub point]] commits the U.S. and North Korea to conclude a bilateral agreement for cooperation in the field of peaceful uses of nuclear energy, which can only be finalized by Congressional action. Section 123 of the U.S. Atomic Energy Act, in fact, requires that all such agreements be laid before Congress where Congress may reject them by a joint resolution of disapproval. In short, the Korean nuclear agreement meets the specific criteria spelled out by the State Department.

The second and third State Department criteria that are of interest are just as clear: When the agreement "involves important commitments affecting the nation as a whole" and "it is desired to give the utmost formality to the commitment with a view to requiring similar formality on the part of the other government concerned, in the interest of long continued respect for its terms."

Again, with many agreements, these questions may be matters for debate but not in the case of the Korean nuclear accord.<sup>4</sup> Indeed, both the agreements supporters and its critics have publicly agreed that the accord relates to the most important national security crisis since the Cuban Missile Crisis.<sup>5</sup> Nor can there be any doubt as to the desirability of requiring formality on the part of North Korea "in the interest of long continued respect" for the agreement's terms. As one of the most promi-

<sup>3</sup> See U.S. Department of State, "Standards Followed in Determining Whether an International Agreement Should Be Concluded as a Treaty," Memorandum, Nov. 30, 1964, prepared by the Treaty Affairs staff, office of the Legal Adviser, MS Department of State, file Pol 4 reprinted in Thomas M. Franck and Michael J. Giannon, *Foreign Relations and National Security Law* (St. Paul, MI: West Publishing Co., 1987) pp. 394-95.

<sup>4</sup> A question worth asking, but that is beyond the scope of this presentation is whether or not in the future all nuclear cooperative agreements should be submitted as treaties. Considering the significance and controversy that surrounded the last major nuclear cooperative agreement in 1985 with the PRC and the controversy likely to be generated over an agreement with North Korea, the suggestion probably deserves serious consideration.

<sup>5</sup> Cf. e.g., Karen Elliot House, "Korea, Clinton's Cuban Missile Crisis," *The Wall Street Journal*, January 5, 1994, p. 14 and McGeorge Bundy and Gordon Goldstein, "A Lot Like the Cuban Missile Crisis," July 3, 1994, *The Washington Post*, p. C11.

nent supporters of the agreement (and a former Clinton Administration appointee) recently argued in *The Washington Post*, the agreement's implementation, which will stretch over a decade and involves a highly unreliable state, won't be smooth. But "if its terms can be sustained," she argues, it will be "a solid win for world peace."<sup>6</sup> Again, the State Department criteria for a treaty seem to be met.

Of course, there always will be those that will argue that the deal is done and that, therefore, Congress should not intervene but simply accept the accord as an executive agreement in good standing. There are three problems with this view, though. The first is that until the Secretary of State formally notifies Congress that the October 21 agreement is an executive agreement—which it hasn't yet done—the agreement is not legally binding (on us or North Korea) and is no more than a political understanding.<sup>7</sup>

Second, if the Senate believes the Executive mistakenly made an executive agreement when it should have presented Congress with a treaty, it has said so and gotten its way. Thus, even at the height of Nixon's imperial presidency, the Senate objected to a base agreement he had reached with Spain that contained important mutual security clauses. It was originally submitted as an executive agreement but after strong Senate objections, President Nixon and, later, President Ford had to renegotiate it and resubmit as a treaty.<sup>8</sup>

Finally, even if the Korean accord is presented as an executive agreement, Congress still must act to authorize it. In fact, the agreement is impossible to put into effect without spending bills, waivers of existing law, and a nuclear cooperative agreement.

What, then, is the bottom line? Simply this: If the Senate is jealous of its Constitutional treaty making authorities, it must, at the very least, treat the agreement potentially as a treaty.

*2. In order to get North Korea to end its declared nuclear program sometime in the distant future, Congress must first approve millions in spending and the waiving of numerous laws even though the specifics of what the agreement requires of North Korea are vague.*

Considerable attention has been focused on the Administration's immediate expenditure of \$5 million to cover the costs of giving North Korea 50,000 tons of heavy fuel oil. Because the Defense Department will pick up this expense, no reprogramming request of Congress is likely (the threshold for Congressional notifications for Defense Department reprogramming requests is \$10 million). Another \$15 million will be needed to cover the costs of supplying North Korea with 150,000 tons of oil within the next 11 months and \$50 million will be needed to supply North Korea with 500,000 tons of oil the following year. The Administration hopes that most of these fuel bills will be paid by Japan and South Korea. If they don't pick up the tab, however, the U.S. is obligated to pay the difference.<sup>9</sup>

A more immediate concern is the cost of stabilizing the nuclear spent fuel storage pond in which 8,000 of North Korea's spent reactor fuel rods currently reside. Since this fuel was intended to make weapons material and was to be reprocessed shortly after being removed from the reactor, it was not designed to be stored in water for very long. The fuel has already been sitting in the storage pond for approximately seven months and has begun deteriorating. If nothing is done, the fuel cladding will eventually break open (according to some experts, this may happen in several months; according to others in two or more years), vent radioactive gases, and actually spill the fuel rod's contents onto the storage fuel pond's floor. If this last event were to occur, it would be difficult to remove the material from the fuel pond.

<sup>6</sup>Jessica Mathews, "A Sound Beginning With North Korea," *The Washington Post*, October 21, 1994, p. A25.

<sup>7</sup>Under the Case Act (1 U.S.C.A. 112(b)), the Secretary of State is required to transmit to Congress "as soon as practicable after the agreement has entered into force \* \* \* but in no event later than sixty days thereafter" any international agreements other than treaties that the Executive has entered into and believes are legally binding on the U.S.

<sup>8</sup>See Franck and Glennon, *Foreign Relations and National Security Law*, p. 396.

<sup>9</sup>See U.S. Arms Control and Disarmament Agency, "U.S.-Democratic People's Republic of Korea Agreed Framework," *Fact Sheet* (Geneva, Switzerland: October 21, 1994).

Earlier this November, Department of Energy (DoE) technicians visited the storage site in North Korea. They plan to go back for a second visit before the end of the year. What they saw on their first visit, I'm told, were fuel rods covered with algae. What the DoE would like to do is to get a closer look at the rods and the pond with diagnostic equipment and try to stabilize the pond's water chemistry to reduce the rate of fuel cladding deterioration. After this is accomplished, it wants to remove each of the 8,000 fuel rods, "can" them in individual stainless steel containers, and put them back in the pond. This will not prevent the fuel rods from deteriorating or stop radioactive gases from being released but it will keep the rods' contents from spilling.

All this immediate activity will cost money (between \$5 and \$10 million dollars), which the Department of Energy must make a reprogramming request to Congress for early next session.

Later, other agreement expenses are sure to arise, the most prominent of which may be what will be needed to cover whatever portion of the reactors neither South Korea nor Japan can manufacture. I understand North Korea is most likely to demand the most advanced reactors the U.S. has sold to South Korea, i.e., Combustion Engineering's latest LWR design. Estimates vary as to how much of these reactors' components South Korea and Japan can manufacture. It is generally agreed, however, that as much as ten percent of these plants' components can only be made in the U.S. It is possible that Japan and South Korea will be willing to pay Combustion Engineering to do this work but it's not likely. If this ten percent turns out to be anything close to ten percent of the plant's projected cost of \$4 billion, the bill Congress would have to pay would be large.

Finally, there are the costs associated with implementing the agreement itself. Setting up offices in North Korea; flying delegations back and forth almost constantly not only to North Korea, but to Japan and South Korea; overseeing dismantlement operations (which themselves could prove quite costly), and other costs we can't yet project.<sup>10</sup>

What Congress will first be confronted with, though, early next year will be a DoE reprogramming request to cover the costs of stabilizing the spent fuel storage pond. Any number of arguments will be made to sell the reprogramming as something deserving urgent attention: The North Koreans will break the agreement; they will reprocess the fuel; if we don't stabilize the pond, it will dramatically increase the difficulty of ever getting the fuel out the country.

All of this will be quite dramatic but only the last projection seems on point. It will be more difficult to get the fuel out the pond but not just for us, but for the North Koreans as well (which, in turn, could complicate North Korea trying to cool off any additional rods there for reprocessing).

In any case, the Administration seems to understand that they may have difficulty in securing this funding. One of the arguments now making the rounds for the reprogramming within the Administration is that stabilizing the pond would buy the U.S. the time it needs to renegotiate or clarify those aspects of the agreement that need fixing. I'm not sure that this argument is likely to be made early if publicly at all. But it does highlight a question Congress needs to focus on: Does it make sense to spend money to implement an agreement that needs fixing before or after it is fixed? If the agreement is only slightly broken, the answer is before. If it's really broken or it might take some effort to fix, though, after would be better.

A quick look at the agreement suggests that clarification is needed at a minimum. Indeed, some of the agreement's key terms are so vague, it's unclear what Congress would be paying for. The accord, for example, talks about "freezing" certain facilities, of "dismantling" them, and of "disposing" of spent fuel and yet, nowhere are these terms defined. Does "freeze" mean sealing facilities without maintaining them (so they would gradually deteriorate and be incapable of being restarted)? Or would it allow maintenance so long as the facilities were not actually operating? Does "dismantle" require leveling the facility or only some degree of disabling? If disabling is permissible, how much is needed? Finally, does "dispose" mean store or demolish?<sup>11</sup>

<sup>10</sup> To my knowledge, no official projection has yet been made of all the various anticipated expenses associated with the agreement.

<sup>11</sup> I understand that original texts of the agreement in Korean are available but that no one other than the State Department has been allowed to translate them.

The agreement also never mentions the term reprocessing plant or reprocessing facility. Yet, the Administration claims North Korea agreed to freeze and eventually dismantle its plant. Presumably, the agreement's reference to "reactors and related facilities" covers North Korea's reprocessing plant or, perhaps, this point is clarified in some classified side agreement. Perhaps but shouldn't we be sure that the North Koreans have the same view of the accord as we do?

Also, the agreement ties IAEA inspections of North Korea's two suspect military waste sites to "when a significant portion of the LWR project is completed" but "before delivery of key nuclear components." But what is "a significant portion": 50 percent, 90 percent? And what is meant by "completed": Delivered, installed, integrated? Also, what is meant by "key": Expensive, large or complicated goods or items on the U.S. Nuclear Regulatory Commission's trigger list? The answers matters: Until the waste sites are inspected, North Korea will remain in violation of its IAEA obligations, which supposedly is what the whole agreement is all about. Certainly, this much is clear: Congress has rightly sent far more carefully drafted arms control agreements back to the negotiating table for clarification over far less.<sup>12</sup>

Beyond these definitional issues, the agreement's text is at odds with what the Administration claims it says.<sup>13</sup> The Administration, for example, claims that the agreement requires North Korea to ship its spent out of the country. The agreement, however, only says that North Korea "will cooperate in finding a method" to "dispose" of the spent fuel "in a manner that does not involve reprocessing in the DPRK." This leaves open the possibility that North Korea could store the material on its territory.

The Administration also claims that North Korea agreed not to build any other graphite-moderated reactors or related facilities in the future. But the agreement is silent about dismantling anything other than existing "graphite-moderated reactors and related facilities."

Finally, the Administration claims the agreement requires North Korea to begin to dismantle its reprocessing plant and reactors when the first LWR unit is completed and end when the second LWR unit is done. Yet, the agreement doesn't say this. It only stipulates that North Korea's dismantlement of these facilities "be completed when the LWR project [i.e., both reactors] is completed."

These differences of view are potentially significant. Given North Korea's dangerous, erratic behavior, it is more important than ever to eliminate any ambiguities that North Korea could exploit to cause serious mischief.

#### WHAT CONGRESS SHOULD DO

*1. Treat the agreement as if it was a treaty and demand that its terms be clarified before allowing money to be spent to implement it.*

Unless the Administration goes on the record claiming that the agreement is only a political understanding that is not legally binding, the Senate should view the accord as if it was a treaty. Its provisions, as such, need to be clear and desirable enough to warrant Congressional backing. If they are not, the Senate should ask the Executive to go back to the North Koreans to secure the desired written clarifications or fixes.

*2. Resist Executive appeals to waive or bend the requirements of existing law or to get U.S. allies or friends to violate their provisions to implement the agreement.*

The legal conditions for loans, foreign aid, and nuclear cooperation should not be waived or bent to make the agreement work but, rather, the other way around. At a minimum, there is nothing in the current agreement text that requires the U.S. to do this or to encourage other nations to do it in our stead. Considering what is at stake (particularly in regard to nuclear cooperation), Congress, should avoid undermining its own laws or encouraging others to do so.

<sup>12</sup> One recent example is the Intermediate Nuclear Forces (INF) Treaty, which failed to define what was meant by the term "weapons delivery system" and that had to be returned in 1988 to the negotiating table for clarification of what this term meant months after the agreement had been signed.

<sup>13</sup> For a side-by-side analysis of what the Administration claims the agreement says and what the actual treaty text is see the chart at the end of this testimony.

3. *Condition actual implementation of the agreement's diplomatic and trade provisions to getting the North-South Denuclearization and Unification talks started and North Korea to open up to the West more generally.*

No matter how well any U.S.-North Korea agreement is drafted, it can never be the solution to the nuclear crisis in Korea. That can only come as a result of denuclearization talks between North and South Korea. When the two states convince each other that the nuclear crisis is behind them and they have created an inspection regime capable of ensuring that no illicit activity is underway, only then will the corner be turned.

Beyond this, the only sure way to know what North Korea has produced is to have a regime governing there that wants the world to know. But that is a very different regime. At the very least it is a regime that will only emerge if we are willing to hold what they want hostage to becoming something they are not—a truly liberal and open government.

This argument may seem radical, but, in fact, it is the same argument the Under Secretary of State for International Security Affairs made earlier this year in The Washington Post defending U.S. policy on North Korea.<sup>14</sup> As Ms. Davis explained, "We are prepared to take steps to help bring North Korea into the family of nations, but only as it meets our conditions." Besides opening up its nuclear program, Ms. Davis argued, North Korea must drop its support of terrorism, its export of ballistic missiles, its hostile foreign policies, and its violation of human rights before the U.S. could accept it as a "normal" nation.

As she rightly argued then, only after North-South exchanges on denuclearization and unification and IAEA inspections were accomplished, should the U.S. engage in further talks with North Korea. Of course, after the October 21 accord, cutting off all talks would be a difficult case for the State Department to make. But there is nothing in the agreement that says we can't condition our opening of more normal commerce with North Korea to its willingness to open denuclearization and unification talks with the South and to liberalize more generally.

4. *Consider separate, additional, discriminate measures to stigmatize North Korea's continued violation of the Nuclear Nonproliferation Treaty.*

Finally, whatever is done with the October 21 accord, Congress should urge the Executive to prevent North Korea from profiting literally from their proliferation. North Korea agreed to remain a party to the NPT and has told American visitors that it will not export nuclear capable missiles. The problem is that North Korea still is in violation of the NPT and it is still in the business of exporting nuclear-capable rockets.

It is not enough to admit this is the case. If we are serious about establishing international norms of nonproliferation, as the Clinton Administration claims it is, we must stigmatize North Korea's nonproliferation infractions. Whenever, this has been raised, however, the worry is that sanctions could not approved in the UN Security Council or would be too provocative.

Yet, there are sanctions that could deprive North Korea's military of cash, help curb dangerous North Korean exports, and eliminate the impression that the U.S. is rewarding North Korea for acquiring the bomb and do so without starting a war or harming innocents. Some of these—such as having the Japanese enforce their existing currency exchange laws (an action we were close to getting agreement on earlier in the year)—would not necessarily require UN approval. Others—such as having the Security Council authorize nations to impound or interdict illicit North Korean nuclear-capable goods if they came into port or were known to be in transit—would have a fair chance of passing. All of the Security Council and even North Korea, after all, are on record saying that they do not proliferate and do not encourage others to do so and if the U.S. and its allies were willing to use all of their influence, Russia and China would at least abstain.

At a minimum, the U.S. should try. Doing nothing simply endorses what North Korea has done and that is the one thing we should condemn.

<sup>14</sup> Lynn Davis, "Korea: No Capitulation," *The Washington Post*, January 26, 1994, p. A21

## The Korean Accord: An Agreement Oversold?

### What the Administration Claims<sup>1</sup>

The Agreed Framework ensures N. Korea will ship its spent fuel "out of the country."

N. Korea must let the IAEA inspect anywhere it wants to "before it (N. Korea) receives any nuclear components for a LWR." The "DPRK has agreed not to build any other graphite-moderated reactors or related facilities in the future."

Dismantlement of N. Korea's reprocessing plant and reactors "will begin when the first LWR unit is completed and end when the second LWR unit is completed."

U.S. provision of oil and reactors is "not a 'bribe' to North Korea" but rather intended to "help it meet a consequential shortfall in electricity production" caused by its abandonment and freezing of current and planned reactors.

The agreement "does not specify a time frame" for the U.S. to upgrade its diplomatic relations and open offices in N. Korea to help implement the agreement and to "integrate Pyongyang into the economic and political mainstream of Asia."

### What the Agreement's Text Says

N. Korea "will cooperate in finding a method" to "dispose" of the spent fuel "in a manner that does not involve reprocessing in the DPRK." [leaving open the possibility that N. Korea could store the material in N. Korea]

"When a significant portion of the LWR project is completed, but before delivery of key nuclear components," the IAEA can inspect at will.

Dismantlement of these facilities "will be completed when the LWR project [i.e., both reactors] is completed."

The U.S. will provide up to 500,000 of heavy oil per year to offset "energy foregone." The two LWRs [or 2,000 MWe capacity], though, would provide N. Korea with 8 times the energy and nearly 2 times the weapons useable material of the reactors it plans to operate by year 2000.

The agreement is silent about dismantlement of anything but existing graphite-moderated reactors and related facilities. No due dates are set to open offices but "Within 3 months" both sides "will reduce barriers to trade and investment, including restrictions on telecommunications services and financial transactions."

<sup>1</sup>All Administration claims are drawn from the Administration's press release issued the day of the agreement's signing. See U.S. Arms Control and Disarmament Agency, "U.S.-Democratic People's Republic of Korea Agreed Framework," *Fact Sheet* (Geneva, Switzerland: October 21, 1994).

[From the Washington Post, Nov. 23, 1994]

### KOREA ACCORD: WHAT IS IT?

(By Victor Gilinsky and Henry Sokolski)

It may seem churlish to raise questions about the Oct. 21 U.S.-North Korean nuclear agreement just as the president is getting China's approval. But the text, which has only recently been circulated, does not track with the administration's upbeat description at the time of the signing. It would be nice to know just what we are getting into.

At that time, the administration said that in exchange for eventual delivery of two large U.S.-style power reactors (so-called, LWRs)—and interim oil supplies—North Korea agreed to "terminate" its worrisome nuclear activities. North Korea was said to have agreed (1) to ship its small reactor's spent fuel, which contains several bombs' worth of plutonium, out of North Korea; (2) to dismantle its reprocessing plant, which extracts the plutonium from spent fuel; (3) to give up its two larger reactors, which are under construction and which, for their size are potent plutonium producers; and (4) to let the International Atomic Energy Agency (IAEA) inspectors back in to check everything.

The trouble is the formal text doesn't quite get there. On the issue of North Korea's spent fuel, it speaks only of the United States and North Korea having to "cooperate in finding a method" to "dispose of the fuel in a safe manner that does not involve reprocessing in" North Korea. This could include leaving the plutonium-bearing fuel rods in North Korea. Nor is there anything in the text about North Korea dismantling any of its plutonium production apparatus—the reactors or reprocessing plant (the latter isn't named in the document)—before the two LWRs are



"completed." This could be 10 years from now—or never. As for a prohibition on building other plutonium production reactors the text is silent. These matters may be covered in a separate agreement, but if they are, why is that not public?

The agreement also is vague about just how far we are committed. To facilitate the LWR transfer, the administration has agreed, "as necessary," to conclude with North Korea a bilateral "agreement for cooperation in the field of peaceful uses of nuclear energy." How that can happen is unclear, for that is a specific type of agreement covered by the strict standards of the U.S. Atomic Energy Act. To be eligible, a nonnuclear state (which we hope North Korea still is) must allow IAEA to inspect all of its nuclear activities. Yet, under the Oct. 21 agreement, the North Koreans will not have to allow inspections of the disputed waste sites until a "significant portion of the light water reactor project is completed." They will have to do this before delivery of "key components" but that's cutting it pretty close.

Moreover, countries' pledges to be inspected have been judged in light of their past records in complying with IAEA inspection requests, a test that North Korea fails. Of course, the president could override these requirements. But is that a good idea? The law's inspection provisions are there precisely to put the brakes on deals with unreliable states like North Korea.

Then there is the agreement's provisions on inspections are "freezing" of its reactors and reprocessing plant. The Oct. 21 agreement text does require North Korea to let the IAEA inspect the nuclear sites acknowledged by the North Koreans, but only after the supply contracts for the LWR project are done. This requirement does not cover inspection of the two disputed waste sites, so North Korea would remain in violation of its IAEA obligations until we ship "key components" to open the sites to IAEA inspectors. Similarly, North Korea's "freeze" of its reactors' construction and on "related facilities" is also tied to U.S. assurances "for the provisions of LWRs." Will they be hostage, or will we?

One thing is clear: We will be directly engaged with the North Koreans—which, of course, is their chief purpose. If the United States tries to influence North Korean behavior by holding things up, we won't be able to hide behind the South Koreans and Japanese, who will be financing and building most of the LWR project. The Oct. 21 agreement stipulates that the United States will "organize" and "lead" the "international consortium to finance and supply the LWR project" and "serve as the principal point of contact with" North Korea for the enterprise. All potential disputes about the project—including technical matters—will be political issues between the United States and the North Koreans. At best, this will involve full-time negotiation.

Which brings us to the final concern: how the agreement will be enforced. What do we do if North Korea decides to keep its spent fuel rods, as the agreement text allows, until the second LWR is built? If we break off the agreement, North Korea could keep the first LWR we gave it, restart its "frozen" small reactor, reprocess the spent fuel rods now in storage through its unfrozen reprocessing plant, separate several bombs' worth of plutonium and perhaps even finish building the two frozen reactors. To avoid this, we will be under tremendous pressure to keep building the second LWR.

If these eventualities are precluded by side agreements, we should know this now. To pay for our immediate obligations under the agreement. Congress will probably have to approve a near-term funding measure soon. This would be a good time to ask, just what are we getting into?

Senator ROBB. That you very much, Mr. Sokolski.

Finally, on our panel we have Mr. Mitchell Reiss, who is a non-proliferation specialist and a Guest Scholar at the Woodrow Wilson Center. He has written a couple of books that are very much on point and has an educational background that certainly marks him as a man of distinguished learning, as is actually true in the case of all of our scholars today. Mr. Reiss, we would be delighted to hear from you.

**STATEMENT OF MITCHELL REISS, GUEST SCHOLAR, WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS, WASHINGTON, DC**

Mr. REISS. Thank you very much, Senator.

I have prepared some written testimony that I would like to enter into the record.

Senator ROBB. Without objection, your written testimony will be included as a part of the formal record.

Mr. REISS. Thank you.

The question I would like to urge this subcommittee to consider today is not whether the framework agreement is a terrific agreement. We have heard views on that expressed already. But, rather, will U.S. national security interests, especially its nonproliferation objectives on the Korean Peninsula and around the world be helped more if the United States now goes forward and fulfills its obligations under this agreement or if the United States now reneges on its obligations.

On balance, from what I have read in the public record, I believe it is in our interest to go forward, to go ahead with this agreement, mindful that we must verify every step of the way that North Korea strictly adheres to its obligations under the agreement.

There have been two criticisms, both of which have been mentioned today, that I would like to focus on. The first is that the United States has been derelict by not requiring immediate special inspections. I think it is important to clarify what special inspections can accomplish and what they cannot accomplish.

They are not a nuclear Rosetta Stone that will unlock the past mysteries of the North's nuclear program. It is likely that laboratory analysis, when we finally get access to the two suspect nuclear waste sites, will simply confirm what we already suspect, that North Korea has conducted multiple processing campaigns and perhaps has anywhere from 6 to 12 kilograms of weapons grade plutonium.

Now there has been far less attention as to what the United States and the IAEA do at that point. If nothing is done, enough plutonium for one, and perhaps two, bombs will remain. That is why it is imperative for the United States to insist, quietly if possible, that North Korea declare where this material is located, immediately have it placed under IAEA safeguards, and then promptly transfer it out of the country.

It was raised earlier, there was some point made earlier today about the IAEA's being undercut by this agreement. I just think it is worthwhile to note that both the Director General, Hans Blix, and the Board of Governors of the IAEA have publicly welcomed the Agreed Framework and I would be happy to provide the subcommittee with the appropriate citations for that.

The second criticism was raised by Senator Pressler, and that is that this agreement undermines the NPT by encouraging similar behavior by other NPT members. As we have heard, Iran is often cited in this regard. I would argue that North Korea is a very imperfect precedent for any other countries that might contemplate manipulating their NPT membership and safeguards commitments to gain similar economic benefits and nuclear technology.

The reason—and we have heard a few reasons earlier by Ambassador Gallucci—but the reason to my mind is, as isolated and impoverished as North Korea is, it has not had a weak nuclear hand to play. It has actually played a strong hand quite well.

The North's negotiating leverage is derived from first, the ability to quickly separate enough plutonium for four to five nuclear bombs and its potential for building a nuclear arsenal of 30 to 50

nuclear weapons within 2 to 3 years; second, a willingness to discard its international legal obligations; and, third, a totalitarian political system that has permitted its leadership to conduct a dangerous game of nuclear brinkmanship with no public accountability.

Although some NPT parties may satisfy two of these conditions, I am not aware of any that satisfy all three.

Further, it is fair to ask if the NPT would have been strengthened if North Korea had not signed the Agreed Framework but, instead, had withdrawn from the NPT as it had threatened to do back in March of 1993. This step would have severely weakened the regime and offered greater encouragement for other states to leave the treaty. It would have increased pressures on South Korea and perhaps other countries in East Asia to acquire independent nuclear arsenals. And it would have served as a lightening rod for criticism of both the IAEA and the NPT at the review conference that will be held next April, where chances for the treaty's indefinite and unconditional extension are already at risk.

To paraphrase Winston Churchill, the Framework Agreement is not the end of the matter. It is not even the beginning of the end. But it is, perhaps, the end of the beginning. It is now time for the United States to move forward to a broader and hopefully more productive relationship with North Korea. Washington can best do that if it tests Pyongyang's stated intention in the Framework Agreement to forever renounce its nuclear ambitions. Thank you.

[The prepared statement of Mr. Reiss follows:]

#### PREPARED STATEMENT OF MITCHELL REISS

The question I would urge this Subcommittee to consider today is not "Is this a terrific agreement?" but rather "Will U.S. national security interests, especially its nonproliferation objectives on the Korean peninsula and around the world, be helped more if the U.S. fulfills its obligations under the framework agreement or if the U.S. reneges on its obligations?" On balance, from what I have read in the public record, I believe that it is in our interests to move ahead with this agreement, mindful that we must verify—every step of the way—Pyongyang's strict adherence to its obligations under the agreement.

There have been two main criticisms of the agreement that I would like to focus on.

The first criticism is that the United States has been derelict by not insisting on immediate special inspections of the two suspected nuclear waste sites; the agreement instead defers such inspections for perhaps five years.

It is important to be clear on what special inspections in North Korea can, and cannot, accomplish. Special inspections have today assumed a symbolic importance that far outstrips any new information they are likely to reveal. They are not a nuclear Rosetta stone that will unlock the past mysteries of the North's nuclear program. It is likely that laboratory analysis of the nuclear waste from the two suspected sites at Yongbyon will simply confirm what the United States and the IAEA already strongly suspect: that North Korea has conducted multiple reprocessing campaigns that might have resulted in the separation of 6-12 kilograms of weapons-grade plutonium.

There has been far less attention on what the United States and the IAEA should do at that point. North Korea may try to excuse its behavior or deny that any such material exists. It might even offer to allow the IAEA to inspect anywhere, anytime, but this would be like looking for a nuclear needle in a haystack. The uncertainty—and enough plutonium for one and perhaps two nuclear bombs—would remain.

That is why it is imperative for the United States to insist, quietly if possible, that North Korea declare where this material is located, immediately have it placed under IAEA safeguards, and then promptly have it transferred out of the country.

This issue raises the question as to whether the IAEA has been remiss in its safeguarding duties in the DPRK. The IAEA has been criticized in the past, deservedly so, for its less than rigorous inspections of Iraq. But in the case of North Korea,

the Agency performed a remarkable job of nuclear detective work. It uncovered (with the help of the United States) unmistakable evidence that North Korea had cheated on its safeguard obligations. It was this evidence that prompted the request for special inspections, and the North's subsequent refusal that provided the legal justification for possible UN Security Council action. If the Security Council failed to act after the IAEA referred the matter to it, that is hardly the IAEA's fault. The IAEA and its system of safeguards support the political process, but cannot compensate for its deficiencies. The North Korean nuclear dispute proved to many skeptics that the IAEA has a vital role to play in promoting nonproliferation efforts worldwide. Because of the framework agreement, it will continue to play that role in North Korea. It is worth noting that the IAEA's Director General, Hans Blix, and its Board of Governors, have publicly welcomed the framework agreement. (See IAEA Press Releases 94/45 and 94/47, October 20 and November 11, 1994, respectively.)

The second criticism is that this agreement undermines the nuclear Nonproliferation Treaty (NPT) by encouraging similar behavior by other NPT members. Iran is most frequently cited in this regard.

North Korea is a very imperfect precedent for any other countries that might contemplate manipulating their INPT membership and IAEA safeguards commitments to gain similar economic benefits and nuclear technology. The reason is that as isolated and impoverished as North Korea is, it has not had a weak nuclear hand to play, but has actually played a strong hand well. The North's negotiating leverage has derived from: (1) the ability to quickly separate enough plutonium for 4-5 nuclear bombs, and its potential for building a nuclear arsenal of 30-50 nuclear weapons within two to three years, (2) a willingness to discard its international legal obligations, and (3) a totalitarian political system that has permitted its leadership to conduct a dangerous game of nuclear brinkmanship with no public accountability. Although some NPT parties may satisfy two of these conditions, I am not aware of any that satisfy all three.

Further, it is fair to ask if the NPT would have been strengthened if North Korea had not signed the framework agreement, but instead had withdrawn from the NPT, as it threatened to do in March 1993. This step would have severely weakened the NPT regime and offered greater encouragement for other states to leave the treaty. It would have increased pressures in South Korea, and perhaps in other countries in East Asia, to acquire independent nuclear arsenals. And it would have served as a lightning rod for criticism of the IAEA and NPT at the NPT Review Conference next April, where chances for the treaty's indefinite and unconditional extension are already at risk.

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To paraphrase Winston Churchill, the US-DPRK framework agreement is not the end of the matter. It is not even the beginning of the end. But it is, perhaps, the end of the beginning. It is now time for the United States to move forward to a broader, and hopefully more productive, relationship with North Korea. Washington can best do that by testing Pyongyang's stated intention in the framework agreement to forever renounce its nuclear ambitions.

Senator ROBB. Thank you very much, Mr. Reiss. I thank all of you. I just have a few relatively brief questions.

Mr. Milhollin, at the conclusion of his testimony, indicated that he would like to comment on the specific remarks and testimony of Ambassador Gallucci or other matters that took place. A couple of you did that specifically.

I would invite anyone to make a comment, either with respect to a point that was made earlier during Ambassador Gallucci's time period, where you found something, a point that was made, to be particularly important and one with which you agree or, to the contrary important and one with which you disagree. In most cases, that is implicit in what you have testified and, certainly even moreso in your formal presentations. But I would invite you to make any comments that reflect either important concurrence or important disagreement with the colloquy that took place earlier between Ambassador Gallucci and the other members of this panel. Mr. Milhollin?

Mr. MILHOLLIN. Thank you.

I would like to make a couple of observations about, first of all, the question of whether this arrangement could be put or should be put into the form of an agreement which would be binding and submitted to Congress.

I have taught contracts for about 15 years, so I know a little bit about the subject. It is very common to make a binding promise to use one's best efforts to do something. That is, just because you cannot guarantee a certain result does not mean that you can't have a contract to use your best efforts to achieve that result. Joint venture agreements are an example. That is point one.

Point two is that the standard agreement for nuclear cooperation between countries, such as the one we have with South Korea, is, in itself, simply a framework. It is a framework agreement. A typical agreement for cooperation, nuclear cooperation, just contains the conditions for cooperation. It does not really oblige either party to do anything specific. You first establish the umbrella and then you make specific arrangements under it, such as a supply of reactors and so forth.

So it seems to me that the argument that either this couldn't be made into an agreement that would be binding or, second, that, as a framework, it does not need to go to Congress, I guess I have a little trouble agreeing with that.

Second concerns the waste sites. I think there is a little confusion about the importance of the waste sites. There are no bombs in the waste sites. But the waste sites are crucial in the sense that they provide evidence of where bombs might be. That is the only practical way to force North Korea to "fess up" and reveal how much plutonium it has made and where that plutonium is. That is the method we are using in Iraq; that is, you find evidence, you confront the Iraqis and you say explain this, because it does not coincide, it does not accord with your version of events up to now. Then the pattern in Iraq has been that the Iraqis will then say OK, and then they would bring more evidence in. And, sooner or later, you find the truth.

Senator ROBB. As a matter of clarification, though, if you discover in the waste sites that there is clear evidence that something has taken place, whatever it is, how does that inevitably lead you to the conclusion as to where it then might be?

Mr. MILHOLLIN. Well, it works like this.

The North Koreans have an obligation to allow inspection and to account for all the fissile material in their country or under their control. So, if you discover in a waste site incontrovertible evidence that there is more material than they have admitted, they are in violation of their safeguards obligation if they do not provide it.

Senator ROBB. Oh, I do not quarrel with that. But you, I thought, said that this would tell you where it is. Or am I misreading you?

Mr. MILHOLLIN. Oh, I'm sorry. No, it does not tell you where it is. It gives you a legal mechanism to pursue the location and the quantities.

Senator ROBB. Oh, all right. There is no misunderstanding on that point. Good.

Mr. MILHOLLIN. The last point that I guess I would like to explore is the question of special inspections.

I think it is going to be very difficult, if not impossible, to have a special inspection in North Korea for 5 to 7 years, regardless of how much evidence we have that they may be hiding something, simply because we have given them a way to claim that any site we want to look at is exempt. And I think they will use that.

The CIA has been saying for some time that the Iranians have a secret bomb program, and there has been a lot of pressure on the International Atomic Energy Agency to go look for it, that is, through special inspections. I think it is going to be very unlikely that the Iranians will stand still for special inspections in their country if North Korea has been given a 5 year pass. And it turns out that Libya is in a similar situation.

With more countries joining the Nonproliferation Treaty that are probably joining in bad faith, the question now under the treaty is not becoming so much what do you do about the countries who are not members, but, rather, it is how do you really police the countries who are members. This agreement creates problems for us there because it sets the North Koreans up as a member, but does not require them to be honest.

If that spreads to other countries, then the treaty will lose its meaning.

Senator ROBB. OK. Mr. Manning.

Mr. MANNING. Let me just followup with a couple of points that I would like to make.

Let me start with the special inspection issue. I have the agreement in front of me and the term "special inspection" is not in there. That is point one.

The language used is allowing the IAEA to take all steps that may be deemed necessary, that is, taking all steps that may be deemed necessary by the IAEA. I think this language was used, as I understand it, because it is possible that the IAEA could ascertain the veracity of their past nuclear behavior without special inspections if they go through the fuel rods, do an analysis, and come up with a conclusion that they are comfortable with about how much reprocessing they did and how much plutonium they are likely to have. That is one point.

One thing I think Ambassador Gallucci didn't mention enough is the context of special inspections. That is to say this is not something the IAEA gets up every morning and does. I am glad there was the example of Iraq, as I mentioned, because, as I recall, we had about 500,000 troops on the ground before we got any special inspections.

The point is unless you are going to go to war and occupy a country, we do live in a world, for better or worse, of nation-states that have a certain amount of sovereignty, and, while the IAEA has statutory authority to conduct special inspections, over the last 40 years or so or however long it may have existed, they have not done a whole lot of them. So this is not an every day request. Keep that in mind.

I also regret that we have to wait as long as we do to get at their nuclear past. But I do think we need to keep in mind that, in a sense, getting a special inspection at all goes beyond normal practice.

That leads me to the next point I want to make. I think we should stress that a lot of the things this agreement does go beyond international norms. That is the rationale for giving them these things. Iran does not have gas graphite reactors that they are willing to trade in for light water technology. And I disagree. I do think they are, in the sense Ambassador Gallucci suggested, are more proliferation resistant. That goes beyond international norms. That they are not reprocessing and they are giving up that reprocessing capability also goes beyond international norms.

A footnote I would add on that is this. When we started this policy, I was in the State Department at that time. The issue of reprocessing was very carefully worked out with South Korea to be done in the context of a North-South Denuclearization Accord.

One thing that slightly troubles me is that they have pulled that out of a North-South context and put it into a U.S.-North Korea context.

When we started the policy, one of the points was to get us out of the middle of this mess because, ultimately, this has to be put back into the context of North-South reconciliation. But, nonetheless, stopping reprocessing is a significant achievement that goes beyond NPT norms, beyond nuclear norms.

So I think that is a fair point.

One place where, again, I want to disagree with what Dr. Gallucci said is this. He, in essence, confirmed what I said earlier about this will open up other countries, opening relations with North Korea. That is exactly my point.

Henry alluded to it, too. How much is Japan going to start putting up? I think there has to be a trilateral coordination, which we have not done a bad job of, about the phasing of economic and political engagement with North Korea so that we got our other concerns, we don't squander the leverage we might otherwise have on getting the other concerns we have. That runs all the way from missiles to—and nobody has talked about chemical weapons. But, frankly, I am more concerned about that in some respects than I am about nuclear weapons.

We could, again, get rid of the entire nuclear capability and they could launch a war with chemical weapons attached to one of their SCUD missiles or a successor. And, as I understand it, they do have some chemical weapon capability.

There was a KGB successor who issued a report on proliferation about a year and a half ago, and they ought to know something about this because they have been closely tied to North Korea in the past. They said that they believe that they did have a chemical weapons capability.

In fact, as part of the normalization process, I would suggest we offer as part of a package to take that stuff off their hands and burn it at Johnston Island or somewhere and get rid of it. I think that is a very dangerous thing. It has often been referred to as the poor man's nuclear weapon.

I wanted to make that point and I will stop there.

Senator ROBB. Mr. Sokolski, you made a number of comments on the specific testimony, but do you have any other observations?

Mr. SOKOLSKI. Yes, four.

I like the comment you made, which is that we are in the middle. As you see from the Op-Ed I wrote with Victor Gilinsky we must send the negotiators in large numbers to sort out all sorts of things, everything from contracts to architects and engineers. You have just begun, to be sure, as far as TDY funds—I mean, there are going to be so many people over there that you are going to be blind by the time you've walked through and met every one of those people who have talked or been involved with the North Koreans.

However, this raises a very general point which I think you, as a body, have to weigh.

Look, you can be in favor of the agreement on the basis of thinking that on balance we are better off, even if the North Koreans break it off some time in the future. Or you can have the opinion, which I have, that at every step of the way, if you break it off, the North Koreans are better off than you ever were if you never entered into the agreement.

But honest men can debate that. That is worth debating. But I will tell you what. Both sides of that debate have to come to terms with one thing. If they want to get what they want, they don't yet have it in a political understanding that has vague terms. I go into great depth in my testimony pointing out 15 provisions that even I can see without looking very hard that I don't know what they mean, and that could have all kinds of terrible, embarrassing consequences, with a regime who makes a business of embarrassing the West, and I mean in a big way.

They know how to negotiate, that's clear.

A second point is this. The NPT norm about reprocessing has a funny history. When I worked in the Defense Department as the deputy for nonproliferation policy, about 3 years ago, when we were working on the denuclearization agreement or statement, I should say, joint statement, Hans Blix was in Paul Wolfowitz' office and I was there. Then, at that time, Blix was arguing, you know, the NPT does not allow reprocessing unless it is for peaceful purposes. Read: I can still take money from Japan for my public affairs program because their reprocessing is for peaceful purposes. The Japanese are giving money at the IAEA and they are OK, even though they are reprocessing. But the North Koreans, they don't have a peaceful program. So the NPT does not allow them to do it.

Now, since then, Blix does not publicly say that anymore. But I would not assume that the NPT cannot be interpreted to say you should not be doing this. Probably one of the big victims in this whole game is that interpretation of the NPT. It used to be argued.

Third, you ought to keep in mind that unification, which everyone seems to be saying they are in favor of, except, perhaps, the North Koreans, requires South Korea to be in the driver's seat on the question of nuclearization and denuclearization. Pushing them aside is not going to promote any peaceful unification on terms the West wants to see.

Finally, there are missiles. Look, Mr. Gallucci said a lot of good things about missiles and he is right to worry about them. One of the key embarrassments that is about to happen, I suspect, in the next 12 to 15 months is that there is going to be a shipment, and we are going to know about it, and we are not legally going to be



able to do anything to prevent it. This is because it's an act of war to stop a ship.

This is one of the things that you raised. In fact, all of your recommendations, by the way, I thought were very good. They were really quite good. And the same for Mr. Murkowski as well. I liked those immensely. They were very sound.

The soundest point on the missiles was made by you, and that is we probably want to get, you want authority to at least be able to stop ships—maybe not on the high seas, but when they come into port as everyone can see there is a some kind of missile there.

This happened several times during the Bush administration. We knew about where these ships were, but we could not do anything. Surely, trying to seek that kind of stigmatization for violating the NPT is appropriate and not provocative. I encourage you to pursue that.

Senator ROBB. Thank you, Mr. Sokolski. Mr. Reiss.

Mr. REISS. Senator, I have three very brief points.

First, I would urge you and the subcommittee to get a technical analysis, either from inside or outside the government, or perhaps both, on the comparison between the proliferation tendencies of light water reactors versus gas graphite reactors. I think this is far too important a subject to be treated lightly as we are responding to this issue here today. I think it merits much deeper attention.

Second, I never had the benefit of taking Professor Milhollin's contracts class, but I did practice law for a few years and my reading of the Framework Agreement is that it is legally binding. It legally binds us to make a good faith effort to fulfill certain commitments to the North Koreans, assuming that they also fulfill their part of the bargain.

I do not understand how it can be read any other way, quite frankly. Perhaps, again, that is something that I am sure you will follow up on with the administration and get them to clarify.

The third point has to do with special inspections. As Bob Manning rightly noted, it is not in the Framework Agreement. I think that that reflects two points. First of all I think it reflects the North Korean sensitivity to the use of that term for all the reasons that Bob mentioned.

Second, I think it also reflects the hope that they may not be necessary. And they may not be necessary if North Korea amends its initial declaration that it submitted to the IAEA back in May of 1992 and places these two nuclear waste sites in that declaration. Then there won't be any need for special inspections because the agency can then go in and inspect them as part of the ad hoc inspection process. It would be far less embarrassing to the North Koreans if they do that. Director Blix has mentioned that to them as a possibility. I think for a lot of reasons that would be the preferred course to go. You also perhaps would not have to wait so long in order to have inspectors get into that site. Thank you.

Senator ROBB. We have been here for over 4 hours now and there is a certain time limit beyond which you don't get anything terribly illuminating from anyone participating and you only strain our ability to sit or whatever the case may be. I don't want to push us beyond that.

But let me just ask you if you would handicap, if you will, the Agreed Framework as it now stands. Putting aside your view of whether or not it is a good idea, because there are clear differences—I don't think I would classify anyone as an unqualified supporter and I would classify only two out of four of you as being more optimistic than the other two, perhaps—in any event, excluding your analysis of whether it is good for the United States, what do you think are the prospects that, at least for the next 5 or 6 years, both parties, or all parties—I'm falling into the same trap—all parties will continue to live up to their commitments or expectations as they are currently drafted or understood?

I realize this is crystal balling and it is difficult because there are so many unknown variables. But if you could give me some insight on that, I would appreciate it.

Mr. MILHOLLIN. I would say that I think it is highly unlikely that the agreement, in its entirety, will be performed. If you are asking us whether beginning now, all of these performances that we anticipate will occur as planned, I think it is unlikely.

Senator ROBB. Let me just ask you, then, to add to your analysis, and the others the same, at what point you think it is going to founder.

I realize that some may welcome that type of question more than others and, with the exception of a few pundits, predictions are normally eschewed by wiser heads. I realize I am asking you to do something you really don't want to do.

Mr. MILHOLLIN. Perhaps the question is whether what we cannot do will occur before what the North Koreans cannot do. That will determine who breaches it or who triggers the deterioration in relationship which results in a breach.

I guess I am very skeptical that the North Koreans will actually yield the material they have now, that they are secretly holding. I think it is more likely that they will go along with it for a while and receive the benefits. But when it comes down to the point where they have to fess up and deliver their plutonium, I guess I think it is unlikely they will do so.

That is about as close as I can come.

Senator ROBB. That is a fair response. Mr. Manning.

Mr. MANNING. Well, I am a little leery, but I would say if we fulfill our end of the bargain and if there is a North Korean regime or a North Korean state—and I would say the chances are probably 1 in 5 or 6 there may not be 5 or 10 years from now—I think that there is an investment being made by the regime in North Korea that I think we have underestimated, frankly. They have attached what legitimacy there is to the new regime, it seems to me, to this agreement.

You may remember that the day it was announced, they tried to synchronize with a big rally in Pyongyang. So they have an investment in this. Again, they see this not in terms of nuclear but in terms of their regime's survival. I think there is a larger investment in this on their part than we realize, that there is a strategic dimension to their engagement with the United States that we do not appreciate. I know the U.S. Government does not. I'm not even sure they are aware of it. And "strategic" is a dirty word in this administration, anyway.

So I think there is a possibility that it may actually work out. I would not want to put the mortgage on it.

Senator ROBB. Nobody wants to put their own money on it. [General laughter]

Mr. MANNING. The other point I would make is it really will depend on the larger context. I mentioned a lot of things that are implicit in this agreement. It is kind of an admission ticket for joining the real world for North Korea in a lot of ways and, depending on what happens, what the state of North-South relations will be, as also levels of economic engagement. Those will all be factors that it is beyond my limited capability to judge. But I think those will be factors that determine North Korean behavior.

So I think there is a probability that it will be carried out, if there is a North Korea to carry it out.

Senator ROBB. Mr. Sokolski.

Mr. SOKOLSKI. It could be quite soon if you ask the parties whose performance really is required to make the accord work. If we understand Mr. Gallucci's testimony properly—and I think he kept saying it over and over again—Japan and South Korea are going to do this, are going to do that; don't worry, it won't cost much and they will take the lead; we are working with them. OK, fine—to say nothing of North Korea.

I think, if Congress wants to make sure that North Korea does not get nervous now that they know it is not legally binding on them—because I guess we have said that and it is on the air, and we want to go back and say well, you know, maybe we want to tighten it up so it's sort of binding, and we would like clarification of this and this—you will probably find very, very soon whether or not the thing will fly. That could happen literally in weeks or months if you pick up the phone and talk to people.

I would not, however, necessarily count on the waste sites being the litmus test of whether this thing is going to live or die and I will tell you why.

I talked with some people at the national labs and their view is that you can fiddle with the radio isotope ratios which is what tells you the kinds of things you are looking for. And if that happens, you may get a lot of white noise when you finally get into those facilities and you may not learn anything.

So if you banking on the comment that well, we will slide until we get in there, I am just telling you that may be something that may not tell you, necessarily what has happened.

Senator ROBB. OK. Mr. Reiss.

Mr. REISS. I have to note that a little bit less than 6 months ago there was a fairly large risk of a war on the part of the Korean Peninsula. Certainly tensions were rising. This was back in June. And now, we sit here today, after the two sides have signed an agreement. I just want to mention that to show how quickly things can change.

I think that there are enormous problems ahead. There will be lots of speed bumps on the road over the next 10 to 12 years. And, as Bob Manning said—and I agree—there may not be a North Korea at some point.

I would like to reprise what some of my colleagues said. I think there are two points, two time periods, that are particularly sen-

sitive. One is the next 6 to 12 months, when I think it is going to be very difficult to get this thing on track, if it is going to get on track. The next one is about 5 to 7 years out, when we will be handing over the sensitive components of the light water reactor technology in return for the North Koreans giving us access to the nuclear waste sites. If we can surmount both of those hurdles, then I think the chances are quite good that the agreement will be completed.

Senator ROBB. Let me ask one final question and then we will rap it up. I particularly direct this to Mr. Milhollin and Mr. Sokolski. But others are invited to share in it, too.

If this treaty—"treaty"—I'm falling into the same trap—if this Framework Agreement had not been reached, entered into, or whatever, even putting aside the contractual elements or lack thereof, what device, what leverage could the United States or the United States in combination with South Korea, Japan, and others have used to bring about the reduction in tensions or the compliance with NPT, the safeguards, North-South dialog, you name it? What elements could have been brought to bear to bring about the result which I think really no one has even said, that the reduction in tensions clearly has been a motivating factor in moving to some agreement? What else could the United States do? In other words, is there, was there a more attractive or more palatable alternative available to the U.S. that has been insufficiently explored, in your judgment?

Mr. MILHOLLIN. Well, I guess I would say that, as I think you said, it is easy to sit behind a negotiator and say that he should have done better, and it is very hard for a negotiator to actually do better. But it seems to me one alternative would have been to take the position that if North Korea really does intend to give up its nuclear program and, therefore, merits the benefits it is receiving, that it should be willing to give them up right away and willing to come clean and explain all of its nuclear activities.

I guess, if we are postulating alternative scenarios, I would say we probably should have held out for a clean deal; that is, yes, we would be willing to supply North Korea with what it needed, but North Korea would have to come into the arrangement with clean hands.

Senator ROBB. I don't want you to get off quite that easily, though. [General laughter]

I am really asking not whether or not you would have concluded the deal at that time but what other options were available to bring to bear on the equation.

Mr. MILHOLLIN. Well, it seems to me one of the ingredients—and this point has been made by other people—one of the ingredients to determine what kind of deal you got was how much pressure you were willing to put on the North Koreans and how much risk you were willing to take.

You may not let me get by with this one, either, but I'll try.

Senator ROBB. I'm making you, for the purposes of this question, the President of the United States and you are now briefing Ambassador Gallucci as to his end position and what you, as President, are willing to do to back him up and bring the negotiation to a successful conclusion.

Mr. MILHOLLIN. I would say if we can get a deal in which we give the North Koreans what they want, we have to get a clean deal. They have to come in with their hands clean. If that means that the risk of confrontation goes up, we are willing to accept it.

Senator ROBB. OK. You're getting closer. You're getting warmer, but you are still not quite coming to grips with this.

Mr. MILHOLLIN. Well, I'm not going to say that I would have told my negotiator to give the North Koreans an ultimatum, that unless they agree, we're going to war in a week. I would not have done that.

Senator ROBB. Well, let's put it this way.

Is there any tool in the arsenal or within the quiver of the negotiator, not just the negotiator but the United States, that could be used to leverage the result that we want to obtain?

Mr. MILHOLLIN. Yes. I think that, frankly, we could have continued the pressure in the U.N. we were mounting. We were going toward sanctions in the U.N. at one point, until that was derailed.

I think that, had we pursued that course and been willing to take some risks of confrontation, we might have gotten a better agreement. I guess if I were giving instructions to my negotiator in this hypothetical arrangement, I would have been prepared to do that, that is, to pursue the sanctions route, threaten North Korea with even more economic and diplomatic and political isolation than it was already suffering in exchange for a better deal. I think there is a continuum here.

The less risk you are willing to accept, the less negotiating leverage you have.

Senator ROBB. Oh, sure.

Mr. MILHOLLIN. There comes a time when you just have to decide how much risk you're willing to take. I guess if you are putting me in the Oval Office, I would have said that it's worth taking some more risk to get a better deal.

Senator ROBB. You are warming to it. I won't ask you to be any more specific. But I understand that this gets into an area that it's very difficult to do.

Mr. Manning I think wanted to respond. I was not excluding the other participants who were willing to give it a little more chance to succeed.

Go ahead and take a shot.

Mr. MANNING. Well, what you're really asking is was a better deal possible and what is the alternative. I guess what I would say is, without having the negotiating record and seeing the confidential side notes, I cannot tell you that there was a better deal. I don't think there is anybody who could tell you there was a better deal that was possible.

I think one of the things that has not been said is the, in my view, mind-boggling ineptitude of the process that got us here over the past 17 months, having private citizens having to bail out an administration from a course it stumbled into.

Don't forget, we went to sanctions last June against North Korea and spent a lot of political capital and put a lot of people in Korea and Japan in difficult positions while a private citizen was single-handedly reversing the policy.

Before we ever put a package deal on the table, in my view we owe the North Koreans one thing, the answer to one question: If I trade in my nukes, what do I get for it?

Up until August, the answer was you get a higher level meeting. I think that is inexcusable. This crisis—just to go back to how we got here, by the fall of 1992, it was quite clear that they had been caught cheating and lying. And the administration was told this is a major league issue. This is not nation-building in Somalia. This is a world class issue.

It was ignored. Not until, when was it, June of 1993, 3 months after they threatened to leave the NPT, was there any policy-level contact with North Korea. This is not what I would call first class policy management. So that is how we stumbled into it.

I think the sanctions road—the point of the policy really is to find out whether there is any deal worth cutting with North Korea. I think the problems, up until recently, have been not letting that play out.

As I say, I don't know if there's a better deal. I think sanctions are dangerous. I think the question you have to ask is are we sacrificing any of our interests to pursue this agreement. And from what I've seen, I don't think we are.

Senator ROBB. Fair enough.

Mr. SOKOLSKI. You look like you are anxious to take on that one.

Mr. SOKOLSKI. Yes.

I think your question, if I understood it, was OK, what if we don't have any agreement? What do we do? What should we do?

That is a real possibility, if I understood your last question. Right?

Senator ROBB. Uh-huh.

Mr. SOKOLSKI. So where are we headed if the bottom falls out. And, by the way, there is good chance it might.

There is a piece that I wrote, which I think is in the attachments, called "Unifying Korea is Our Only Hope." It's kind of a cute title.

I think it is true.

Look, you really do have a problem dealing with North Korea because, hey, it's North Korea. I don't think you have a problem dealing with a North Korea that begins to get absorbed by the South, however. So it seems to me this is where you need to have our policy go. That's number one. And if you are going in that direction, then there are a lot of things you ought to be doing.

Number two, you know the South Koreans are talking to the North Koreans in Hong Kong about investment while all this is going on. I think that if you think about a peace offensive against the North, where North Korea and its legitimacy is on the line to produce a more economically beneficial life for their people—they have publicly said that for the first time in the last year or so, publicly; they did not used to say that was in the mix of things that folks were going to get—the only way they can get it is if they get cash from the West.

Now if we help them and they open up, and those two things should be related, then I see a better outcome than even the accord. This is because once that regime starts changing to something that can be absorbed and is liberal, you are going to find out

everything you need to know about the nuclear program and it is going to be a nonnuclear Korea.

The reason for this in part is because, it seems to me, the denuclearization agreement ought to be implemented, even if there is unification. And we do have something ready to go, to work on.

And, rather than worrying about how many bombs North Korea is going to have 12 years from now, let's think about where we want to be with regard to the politics of the peninsula 12 years from now because, as Bob pointed out, if North Korea is absorbed by the South, this crisis goes up in a puff of unification.

This is what you want to induce and encourage.

Senator ROBB. Mr. Reiss, would you like to take a shot at that? It is not obligatory.

Mr. REISS. Thanks. I addressed this in the written testimony and I would like to let it rest there, given the lateness of the hour.

Senator ROBB. A wise choice, perhaps, on your part. [General laughter]

With that, let me thank each of you for coming, for offering your expertise and testimony to what is, clearly, a very important topic, one that will be continued. But it will be continued after the start of the year under new management, barring some emergency, which I hope will not cause us to convene before that particular period of time.

So, with that, and with thanks to all of you for coming, this particular hearing is adjourned.

[Whereupon, at 1:30 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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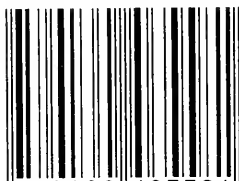


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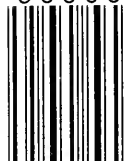




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